

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

75-7021

In The
UNITED STATES COURT OF APPEALS
For The Second Circuit

ROBERT J. FINE,

Plaintiff-Appellant,

vs..

THE CITY OF NEW YORK, FRANK KLEIN, MARVYN KORNBERG,
ESQ., ALBERT GAUDELLI, ESQ. and HERBERT, KAHN, ESQ.,

Defendant-Appellees,

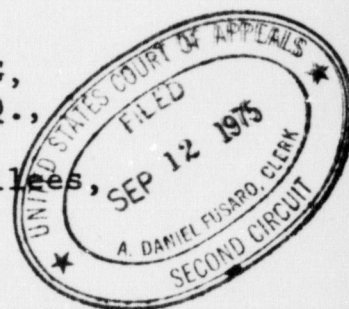
and

PTL. ANTHONY SALADINO, ESTATE OF ROBERT L. RADTKE,
DET. MICHAEL SASSAMAN, PTL. "JOHN" STANLEY, PTL. "JOHN"
DWYER, PTL. "JOHN" FISCHER, SGT. "JOHN" MURRAY, DAVID
FAULKNER and MRS. DOLORES FAULKNER,

Defendants.

APPENDIX OF PLAINTIFF-APPELLANT

DAN BRECHER
Attorney for Plaintiff-Appellant
230 Park Avenue
New York, New York 10017
(212) 986-2820



PAGINATION AS IN ORIGINAL COPY

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CIVIL DOCKET
UNITED STATES DISTRICT COURT

Jury demand date:

74 CIV. 3116

JUDGE BRIEANT

D. C. Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

ROBERT J. FINE

VS.

For plaintiff:

Dan Brecher, 230 Park Ave., N.Y.C.
10017 986-2820

THE CITY OF NEW YORK,
PTL. ANTHONY SALADINO,
ESTATE OF ROBERT L. RADTKE,
DET. MICHAEL SASSAMAN,
PTL. "JOHN" STANLEY,
PTL. "JOHN" DWYER,
PTL. "JOHN" FISCHER,
SGT "JOHN" MURRAY,
FRANK KLEIN,
DAVID FAULKNER,
MRS. DOLORES FAULKNER,
MARVYN KORNBERG, ESQ.,
ALBERT GAUDELLI, ESQ.,
HERBERT KAHN, ESQ.

For defendant:

Louis J. Lefkowitz, Att'y Gen.
2 World Trade Center NYC 10047
488-5896 (Defts Gaudelli & Kahn)

Frank Klein (Pro Se)
42-15 43rd Ave. L.I.C., N.Y. 11104
544-3075

ADRIAN P. BURKE Corp. Counsel for NEC
Municipal Bldg. NYC
Saul Bernstein, Asst. Counsel for NYC.
(Defts. The City of N.Y.; Ptl Anthony Saladi
Michael Sassaman, Det. John Stanley;
Ptl. Jess Fisher (John); "John" Murray;
"John" Dyer)

STATISTICAL RECORD

COSTS

DATE

NAME OR
RECEIPT NO.

REC.

DISB.

J.S. 5 mailed

X

Clerk

J.S. 6 mailed

Marshal

Basis of Action: Civil Rights A
Act.

Docket fee

Witness fees

Action arose at:

Depositions

74 CIV 3110 JUDGE BRIEANT

74 CIV. 3110

JUDGE BRIEANT

JUDGE BRIEANT

DATE	PROCEEDINGS	Date Of Judgment
Jul 22-74	Filed complaint & issued summons.	
Jul 22-74	Filed affidavit of Vicki Epstein.	
Jul 22-74	Filed affidavit of Samuel Einhorn.	
Sep. 9-74	Filed Stip & Order extending to 9-25-74, time for defts Gaudelli & Kahn to answer the complt.....BRIEANT, J.	
Sep 25-74	Filed Stip. & Order extending to 10-15-74 the time deft. MARVYN KORNBERG, ESQ. has to answer the complaint....Brieant, J.	
Sep. 25-74	Filed summons & Marshal's returns.	
	City of N.Y.	Served: By: M. Isaldstein 8-1-74
	Ptl. A. Saladino	Ptl. Meyer 8-15-74
	Ptl. A. Saladino	Not served
	Est. of Robt. L. Radtke	"
	Det. Michael Sassaman	Marshal 9-20-74
	Ptl. J. Stanley	Lt. Mills 7-31-74
	Ptl. J. Dwyer	Not served
	Ptl. J. Fischer	"
	Sgt. J. Murray	"
	Frank Klein	Mrs. F. Klein 8-30-74
	David Faulkner	D. Faulkner 7-24-74
	Mrs. D. Faulkner	D. Faulkner 7-24-74
	Marvyn Kornberg	Mrs. Kornberg 9-6-74
	Marvyn Kornberg	Not served
	Albert Gaudelli	H. Ehrlich 8-22-74
	Herbert Kahn	Marshal 8-6-74
	Ptl. A. Dwyer	Sgt. D. McKillop 8-30-74
	Ptl. J. Fischer	Lt. M. Buckley 8-13-74
	Sgt. F. Murray	Lt. G.A. Mc Mann 8-19-74
Sep. 26-74	Filed Stip & Order extending to 10-15-74 time for deft (Robert Klein) to answer the complt.....BRIEANT, J.	
Oct. 7-74	Filed ANSWER to complt by deft Klein.	FK
Oct. 9-74	Filed Pltff notice of deposition to take deposition of deft. Frank Klein.	
Oct. 9-74	Filed Pltff's interrogatories to deft. Frank Klein.	
Oct. 15-74	Filed deft (Kornberg) affdvt & notice of motion to dismiss the complt. Ret. 10-25-74.	
Oct. 15-74	Filed deft (Kornberg) memo of law in support of motion to dismiss.	
Oct 21-74	Filed Deft's Caudelli & Kahn Notice of Motion to dismiss the complaint. Motion returnable 10-25-74.	
Oct 21-74	Filed Memorandum of Law on Behalf of Deft's Caudelli and Kahn	
Oct 21-74	Filed Defts. The City of N.Y. & Michael Sassaman, Det. William Statley, sued herein as "John Stanley, Ptl. Jess Fisher, sued herein as "John" Fischer, Ptl. Anthony Saladino, Lt. Francis Murray, sued herein as Sgt. "John" Murray, and Ptl Albert Dwyer, sued herein as Ptl. "John" Dwyer.	NYC
Oct. 31-74	Filed Order extending to 11-7-74 hearing of defts motions.....BRIEANT, J. (On letter dated 10-23-74 by pltff)	
Nov 4-74	Filed Pltff's Interrogs. to deft Ptl. Anthony Saladino Set No. 1	
Nov 4-74	Filed Pltff's Notice of Deposition of Deft. Ptl. Anthony Saladino.	
Nov 6-74	Filed Pltff's Notice of Deposition of Michael Sassaman.	
Nov 18-74	Filed Pltff's memorandum in opposition to Deft Marvyn Kornberg's motion to dismiss.	
Nov 18-74	Filed Pltff's memorandum in opposition to Deft. Frank Klein's motion to dismiss.	
Nov 18-74	Filed Pltff's memorandum in opposition to motion to dismiss of Deft's Caudelli & Kahn.	
Nov 18-74	Filed Deft, Marvyn Kornberg's Memorandum of law in reply to Pltff.	

See Proc # 2

ROBERT J. FINE VS THE CITY OF N.Y. ET AL

D. C. 112 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
11-25-74	Filed Memorandum/411.84 and order dismissing as to certain debts only.....The motions are granted. There is no just reason for delay....Our Clerk shall enter final judgment in favor of all four movants and debt. City dismissing the complt. and denying all relief as to them....So Ordered..Briant, J. m/n
Nov 26-74	Filed Adult Summons with Marshal's Returns. Served: Estate of Robert L. Radtke by Claire Radtke on 11-19-74.
Dec 6-74	Filed Judgment that debts. Albert Gaudelli, Herbert Kahn, Frank Klein, Marvyn Kornberg and the City of N.Y. have judgment against the plttf. Robert J. Fine, dismissing the complt. as to the said debts....Raymond F. Burghardt, Clerk ... Approved:12-6-74.C. L. Briant, J U.S.D.J. m/n ent. 12-10-74
Dec 11-74	Filed Debt. Anthony Saladdino's answers to interrogs.
Dec 26-74	Filed Plttf's NOTICE of Appeal to USCA from the final judgment dismissing the complt. as against debts. Gaudelli, Kahn, Klein, Kornberg and the City of NY., ent. 12-6-74.....Notices mailed on 12-30-74 to: L. J. Lefkowitz Atty Gen., Adrian P. Burke, Corp. Counsel., Debt. Frank Klein. Harold C. Harrison.
Jan 13-75	Filed Order & Stip. of Discontinuance between debt. NYC & debt. M. Kornberg, Esq..Briant, J. cross-claim:
Jan 16-75	Filed Affdvt. of Service of Answer of Debt. NYC.
Jan 20-75	Filed Stip. & Order that the time of the debt. F. Klein to answer the cross-compl. is extended to 3-1-75....Briant, J. (Pro-Se Ck to m/n)
Jan 31-75	Filed Deposition of Ptl. Anthony Saladino, taken on 11-26-74.
Jan 31-75	Filed Deposition of Ptl. Michael Sassaman, taken 11-26-74.
Feb 10-75	Filed Letter from Dan Brecher dated 1-30-75 to Judge Briant, treated as a motion to reargue.
Feb 10-75	Filed Memo-End on back of motion to reargue filed on 2-10-75...Treating the annexed letter as a motion to reargue our memorandum decision of 11-22-74, the motion is denied as untimely. Briant, J. m/n
Feb 13-75	Filed Stip. Discontinuing Cross Action of NYC Vs Frank Klein...subject to reinstatement pending the result of appeal taken by plttf...Briant, J. (pro-se to m/n)
Mar 14-75	Filed Plttf's Amended Notice of Appeal to USCA from final judgment ent. on 12-6-74copies of Notice mailed on 3-17-75 to:Harold C. Harrison, Esq. & to Adrian P. Burke Esq. Corp. Counsel; Louis J. Lefkowitz, Atty Gen. NYC: Frank Klein, Debt. Pro Se.
3-27-75	Filed Plttf's Notice of Motion for an order granting relief to the plttf. from the final judgment dismissing the complt as against certain debts..... ret. 4-8-75...at 9:30AM Rm 1106.
3-2-75	Filed NYC's Affdvt. in opposition to plttfs' motion seeking relief from final Judgment.
4-22-75	Filed Supplemental Affdvt of plttf, by Dan Brecher, in support of debts' motion to reargue.
4-25-75	Filed Notice to Docket Clerk that this action has been transmitted to ECL on 4-28-75.
5-8-75	Filed Debts' atty. NYC's Corp. Counsel's Notice of Application to be relieved as atty of record for debts. J. Murray, J. Stanley and J. Dyer..... ret. 5-16-75....at 10AM.
5-27-75	Filed Memo of Plttf. in support of motion sup. to Rule 60(b).
5-27-75	Filed Debt. M. Kornberg's Memo of Law.
5-27-75	Filed Memo-End on back of motion filed 5-8-75...The within motion is disposed of as directed by the Court this date. See Transcript. Settle Order on notice...Briant, J. mn

Continue on page#3

DATE	PROCEEDINGS	Date Order 3-4-ment 4
6-27-75	Filed Memo-End on back of motion filed 3-5-75.....Reargument is granted, and upon reargument, the prior decision is adhered to in all respects, except that plttf. is granted leave, if so advised, to file an amended complt. within 20 days from date hereof against deft. Kornberg. At the hearing held this date, factual allegations were made against Kornberg which were not before the Court when the original motion was submitted....So Ordered...Brieant, J. mn	
6-17-75	Filed Order that the Corp. Counsel's Motion relieving the Corp Counsel as atty for defts. P. Murray, W. Stanley, A. Dwyer is granted and that all proceedings in this Court are stayed for a period of 30 days....Brieant, J. mn	
6-19-75	Filed Plttf's Second Amended Notice of Appeal to USCA from final judg. ent 12-6-75.....Copies Mailed on 6-20-75 to: H. C. Harrison Esq.---W. B. Richland Esq. Corp Counsel of City of NY---L.J. Eefkowitz. Atty Gen of NY State---Frank Klein, Pro-Se.	

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO.

ROBERT J. FINE,

Plaintiff

v.

THE CITY OF NEW YORK, PTL. ANTHONY SALADINO,
ESTATE OF ROBERT L. RADTKE, DET. MICHAEL
SASSAMAN, PTL. "JOHN" STANLEY, PTL. "JOHN"
DWYER, PTL. "JOHN" FISCHER, SGT. "JOHN"
MURRAY, FRANK KLEIN, DAVID FAULKNER, MRS.
DOLORES FAULKNER, MARVYN KORNBERG, ESQ.,
ALBERT GAUDELLI, ESQ. and HERBERT KAHN, ESQ.,
Defendants

SUMMONS

To the above named Defendant s:

You are hereby summoned and required to serve upon DAN BRECHER, ESQ.

plaintiff's attorney , whose address is 230 Park Avenue, Suite 1360,
New York, New York 10017

an answer to the complaint which is herewith served upon you, within 20 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken
against you for the relief demanded in the complaint.

Raymond F. Burghardt

Clerk of Court.

B. Edwards

Deputy Clerk.

Date:

[Seal of Court]

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

No.

United States District Court
FOR THE
Southern District of New York

ROBERT J. FINE,
Plaintiff,

v.
THE CITY OF NEW YORK, PTL.
ANTHONY SALADINO, ESTATE OF
ROBERT L. RADTKE, et al.,
Defendants.

SUMMONS IN CIVIL ACTION

Returnable not later than 20 days
after service.

Dan Brecher, Esq.,
Attorney for Plaintiff

FD-11-LK-7-20-60-140M-6000

MARSHAL'S FEES

Travel \$

Service

Subscribed and sworn to before me, a

day of

, 19 .

[SEAL]

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

United States Marshal

By Deputy United States Marshal

this

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT J. FINE,

Plaintiff,

-against-

COMPLAINT

THE CITY OF NEW YORK, PTL. ANTHONY
SALADINO, ESTATE OF ROBERT L. RADTKE,
DET. MICHAEL SASSAMAN, PTL. "JOHN"
STANLEY, PTL. "JOHN" DWYER, PTL.
"JOHN" FISCHER, SGT. "JOHN" MURRAY,
FRANK KLEIN, DAVID FAULKNER, MRS.
DOLORES FAULKNER, MARVYN KORNBERG,
ESQ., ALBERT GAUDELLI, ESQ. and
HERBERT KAHN, ESQ.

Defendants.

Plaintiff, complaining of the defendants by his attorney, DAN BRECHER, ESQ., respectfully shows to this Court and alleges:

AS AND FOR A FIRST CLAIM

1. The jurisdiction of this Court is invoked under the Fourteenth Amendment of the United States Constitution and Title 28, United States Code, Sections 1331 and 1343, and Title 42, United States Code, Sections 1981-1988.

2. The matter in controversy exceeds the sum or value of \$10,000.00 exclusive of interest and costs.

3. Upon information and belief, during all times herein mentioned, defendant CITY OF NEW YORK maintained its principal office in the County, City and State of New York, and the individual defendants were citizens of the United States and residents

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the _____ day of _____

I received this summons and served it together with the complaint herein as follows:

of the State of New York except that the defendants DAVID and

~~DOLORES FAULKNER were residents of the State of New Jersey.~~

Plaintiff is a citizen of the United States and a resident of the State of New York, and presently has his residence in the City and State of New York.

4. Upon information and belief, prior to March 5, 1972, and during the years 1972 and 1973, and at subsequent times not now known to plaintiff, the defendants ANTHONY SALADINO (hereinafter referred to as "SALADINO"), ROBERT L. RADTKE (deceased) (hereinafter referred to as "RADTKE"), MICHAEL SASSAMAN (hereinafter referred to as "SASSAMAN"), "JOHN" STANLEY (hereinafter referred to as "STANLEY"), "JOHN" DWYER (hereinafter referred to as "DWYER"), "JOHN" FISCHER (hereinafter referred to as "FISCHER"), and "JOHN" MURRAY (hereinafter referred to as "MURRAY") were police officers in the New York City Police Department; FRANK KLEIN (hereinafter referred to as "KLEIN"), was an attorney in private practice in the City of New York; DAVID FAULKNER (hereinafter referred to as "FAULKNER"), was a minor, the son of the defendant MRS. DOLORES FAULKNER; MRS. DOLORES FAULKNER (hereinafter referred to as "MRS. FAULKNER"), was the mother of the defendant FAULKNER; MARVYN KORNBERG, ESQ. (hereinafter referred to as "KORNBERG"), was an attorney in private practice in the City of New York; ALBERT GAUDELLI (hereinafter referred to as "GAUDELLI") and HERBERT KAHN (hereinafter referred to as "KAHN") were duly authorized and appointed Assistant District Attorneys in the Queens County District Attorney's office in the City and State of New York.

5. Upon information and belief, during all times herein mentioned, defendant police officers and assistant district attorneys and each of them were acting under color of the statutes, ordinances, regulations, customs and usages of the City and State of New York.

6. The basis of the claims herein arises from acts of the defendants utilizing the power and color of state authority to deprive plaintiff of his Constitutional rights to be secure against unlawful searches and seizures, to be protected against cruel and unusual punishment and to be guaranteed due process of law and equal protection under the Fourteenth Amendment to the United States Constitution.

7. On and prior to March 5, 1972, plaintiff owned and operated a taxicab licensed by the City of New York.

8. Prior to March 7, 1972, plaintiff was the sole tenant and occupant of an apartment which he rented at 132-48 41st Avenue, Queens, New York.

9. On or about the 5th day of March, 1972, the defendant FAULKNER, some or all of the defendant police officers and the defendant KORNBERG forced entry into the aforesaid premises occupied by the plaintiff, unlawfully searched the rooms of the said premises, and unlawfully destroyed, damaged and took possession of plaintiff's property.

10. On or about the 6th day of March, 1972, some or all of the said defendants again forced entry into the said premises occupied by the plaintiff, again unlawfully searched the rooms of

the said premises and again unlawfully destroyed, damaged and took possession of plaintiff's property.

11. On or about the 7th day of March, 1972, some or all of the said defendants forced entry into the premises occupied by the plaintiff, unlawfully searched the rooms of the premises and again unlawfully destroyed, damaged and took possession of plaintiff's property.

12. Upon information and belief, during the years 1971 and 1972, one or more of the defendants forced entry into the premises of the plaintiff upon dates other than those set forth in paragraphs 9, 10 and 11 of this complaint and upon such other occasions, the exact dates of which are presently unknown to plaintiff, searched the rooms of said premises and committed other unlawful acts therein all to the detriment and damage of plaintiff.

13. Upon information and belief, the acts alleged in paragraphs 9, 10 and 11 above were committed by the defendant police officers in their capacities as police officers in the New York City Police Department.

14. Upon information and belief, the acts alleged in paragraphs 9, 10 and 11 were committed upon the instructions of the defendant police officers in their capacities as police officers in the New York City Police Department, and the said afore-said acts were committed with the knowledge and consent of the said defendants FAULKNER and KORNBERG.

15. Upon information and belief, none of the defendants at any of the times mentioned herein, and more particularly at the time and place of the events alleged in paragraphs 9, 10, 11 and

12 above, had in their possession any warrant issued by any judge, court or magistrate authorizing a search of the aforesaid premises nor had any warrants in fact been issued by any judge, court or magistrate for the said search.

16. On or about the 17th day of January, 1974, the Supreme Court of the State of New York found that the aforescribed activities of defendants alleged in paragraphs 9, 10 and 11 constituted unlawful searches of the plaintiff's home and had deprived the plaintiff of his Constitutional rights under the Fourteenth Amendment to the United States Constitution to be protected from unreasonable searches and seizures.

17. Subsequent to the acts of the defendants alleged in paragraphs 9, 10 and 11, the defendants instituted criminal proceedings against the plaintiff on charges of sodomy in the third degree, endangering the welfare of a child, promoting gambling, possession of gambling records in the second degree and possession of weapons and dangerous instruments and appliances as a misdemeanor. All of these charges were dismissed in the Supreme Court, Criminal Term, Queens County.

18. Upon information and belief, the criminal actions against the plaintiff hereto described in paragraph 17, were instituted upon the instructions and directions of the defendants including the defendants GAUDELLI and KAHN, who were acting in their capacities as assistant district attorneys, and upon the urgings and recommendations of the defendant police officers acting in their capacities as members of the New York City Police Department.

19. All of the foregoing criminal proceedings were the direct result of the forcible entries alleged in paragraphs 9, 10 and 11 and each of said proceedings could not and would have been brought if the said forcible entries had not occurred.

20. The Supreme Court, Queens County has held that the evidence utilized in the aforescribed criminal proceedings was obtained by the defendants and other officials as a result of entry into the premises and search without a search warrant as hereinbefore described in paragraphs 9, 10 and 11, and that such searches were illegal and that such unlawfully obtained evidence could not be utilized in said criminal proceedings.

21. The use of the unlawfully obtained evidence in the criminal proceedings as hereinbefore described deprived the plaintiff of his rights secured by the Fourteenth Amendment to the United States Constitution to be protected against unreasonable searches and seizures.

22. The aforescribed proceedings instituted by the defendants to find the plaintiff guilty of crimes were the direct result of the unconstitutional searches and seizures in plaintiff's premises as heretofore described.

23. The illegal searches of plaintiff's premises heretofore described resulting in depriving plaintiff of his constitutional right to be secure from unreasonable searches and seizures were instructed by the defendant police officers, acting in their capacities as members of the New York City Police Department and the defendant KORNBERG, to be done by defendant FAULKNER and by

some or all of the defendant police officers, acting in their capacities as members of the New York City Police Department, and others, for the purpose and with the intent of obtaining, under the color of State statute, ordinance, regulation, custom and usage, information for the purposes of instituting criminal proceedings and that said criminal proceedings were in fact instituted by the defendants upon the basis of the illegal searches.

24. The aforescribed acts of the defendants in prosecuting the aforescribed criminal charges against the plaintiff constitute cruel and unusual punishment of plaintiff in violation of the Fourteenth Amendment to the United States Constitution.

25. The aforesaid acts of the defendants constituted a violation of the Constitution and laws of the United States of America, in that the plaintiff was deprived by the defendants, and each of them, of his right to be secure in his home against arbitrary and unreasonable searches and seizures, of his right not to be subject to cruel and unusual punishment and of his right not to be deprived of his life, liberties and property, without due process of law, all in violation of the Fourteenth Amendment to the Constitution of the United States and Title 28, United States Code, Section 1343 and Title 42, United States Code, Section 1983.

26. As a direct and proximate result of the aforesaid acts of the defendants and each of them, plaintiff

(a) has been and continues to be prevented and deterred from attending to his usual occupation;

(b) has been and continues to be greatly injured in his reputation, good name and credit among his business associates, business acquaintances, his personal friends and his social acquaintances, and among the public generally;

(c) was and continues to be considerably harassed and annoyed;

(d) was and continues to be put to substantial expense, including legal expenses, counsel fees and otherwise, in defending against the aforesaid acts of the defendants;

(e) has suffered and continues to suffer loss of property, the value of which exceeds \$70,000.00;

(f) has suffered physical injury and continues to suffer great mental and nervous distress and humiliation and has sustained emotional disturbances; that some of the aforesaid damages and injuries to plaintiff and his reputation are permanent and the aforesaid harassment and expenses continue to this date.

27. All of the aforesaid acts of defendants were done wilfully and maliciously and with a wanton disregard of the rights of the plaintiff.

28. The defendants did not act in good faith in entering plaintiff's premises as described herein.

29. By reason of the foregoing, plaintiff incurred losses and damages in excess of \$30,000.00, resulting from being deterred from attending to his usual occupation and activities; in excess of \$100,000.00 from injury to his reputation, good name and credit; in excess of \$100,000.00 from harassment and annoyance;

in excess of \$30,000.00 for legal expenses and counsel fees; in excess of \$90,000.00 in lost and/or damaged property; and in excess of \$100,000.00 from physical injury, mental and nervous distress and emotional disturbances.

30. By reason of the foregoing, plaintiff has been damaged in excess of the sum of \$450,000.00 and claims exemplary damages of \$1,350,000.00.

AS AND FOR A SECOND CLAIM

31. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered "1" through "30" inclusive of this complaint as if fully and completely set forth herein.

32. On or prior to the 5th day of March, 1972, and continuing up to the present time in the State of New York, the defendants and each of them conspired to deprive the plaintiff of his rights provided under the Constitution of the United States, and particularly those rights provided under Amendment Fourteenth to the United States Constitution and Title 42, U.S.C. 1981-1988, by use of the color of State statute, ordinance, regulation, custom and usage and through use of State facilities and organs and, in connection therewith, the said defendants conspired to impede, hinder, obstruct and defeat the due course and due process of law and justice in the State of New York, to deny the plaintiff the equal protections of the law and to deprive plaintiff of the rights, privileges and immunities secured by the Constitution and laws of the United States extended to citizens of the United States.

33. In pursuance of said objectives and as part of said conspiracy, the defendants treated and caused plaintiff to be treated as a separate class of citizen not entitled to the benefits of search warrants nor to the rights or privacy secured by the United States Constitution nor to the right to be free of arbitrary and unreasonable searches and seizures, subjected and caused plaintiff to be subjected to cruel and inhuman punishment and to a deprivation of due process of law and a denial of the due course of justice through the institution of criminal proceedings as hereinbefore alleged and the use therein of illegally and unconstitutionally obtained evidence.

34. In furtherance of the object of said conspiracy, one or more of said defendants did do and cause to be done the acts set forth in paragraphs numbered "9" through "12" inclusive and "17" of this complaint and in violation of Title 42, United States Code, Section 1985(2) and (3) did thereby injure plaintiff in his person and property as set forth in paragraphs "26" and "29" of the complaint, and deprive him of having and exercising his rights and privileges under the Constitution and laws of the United States, as set forth in paragraphs "25" of this complaint.

35. By reason of the foregoing, plaintiff has been damaged in the sum of \$450,000.00 and claims exemplary damages in the sum of \$1,350,000.00.

AS AND FOR A THIRD CLAIM

36. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered "1" through "35"

inclusive of this complaint as if fully and completely set forth herein.

37. On or about March 5, 6 and 7, 1972, defendants converted to their own use \$3,800.00 in United States currency, a coin collection, furniture, photo albums, jewelry, 20,000 Pesos in Colombian currency, two dogs, a taxicab, clothing and other personal property all of a total value in excess of \$90,000.00, and all being the property of plaintiff.

AS AND FOR A FOURTH CLAIM

38. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered "1" through "37" inclusive of this complaint as if fully and completely set forth herein.

39. Soon after March 5, 1972, some of the defendants conspired to extort money from plaintiff by withholding plaintiff's taxicab from plaintiff's possession unless plaintiff paid money to said defendants.

40. Plaintiff did in fact pay the defendant KLEIN in excess of \$500.00 as a result of this extortion by the defendants.

AS AND FOR A FIFTH CLAIM

41. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered "1" through "40" inclusive of this complaint as if fully and completely set forth herein.

42. Upon information and belief, in the period soon after March 7, 1972, the defendant MRS. FAULKNER conspired with certain of the other defendants in an attempt to have the plaintiff pay money to them in return for their assistance in obtaining the dropping of the criminal charges against the plaintiff described in paragraph 17 above.

43. On or about April 11, 1972, plaintiff did in fact pay the defendant KLEIN \$550.00 to obtain the release of plaintiff's taxicab from police custody.

AS AND FOR A SIXTH CLAIM

44. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered "1" through "43" inclusive of this complaint as if fully and completely set forth herein.

45. On or about March 7, 1972, defendant SALADINO and a police sergeant in the 109th precinct assaulted, slandered, harassed and abused plaintiff on the premises of the 109th precinct.

46. The police sergeant in the 109th precinct, on or about March 7, 1972, told Mildred Moriches, a woman who worked for the plaintiff, that plaintiff was a pervert who liked little boys, that she should keep her grandchildren away from plaintiff and that she should be more careful of who she works for.

47. As a result of the above, plaintiff suffered damages in excess of \$250,000.00 and demands exemplary damages of \$750,000.00

AS AND FOR A SEVENTH CLAIM

48. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered "1" through "47" inclusive of this complaint as if fully and completely set forth herein.

49. The plaintiff has paid legal fees in excess of \$3,000.00 to the defendant KLEIN for legal services which said defendant failed to render and/or rendered in a negligent, fraudulent and illegal manner.

50. As a result of the defendant KLEIN's breach of contract, fraud, negligence and criminal acts in regard to this matter, plaintiff was required to expend funds in excess of \$30,000.00 in additional legal fees.

51. As a result of the negligence, fraud, extortion, conspiracy and other criminal acts, the plaintiff has suffered damages in excess of \$500,000.00, and claims exemplary damages of \$1,500,000.00.

WHEREFORE, judgment is demanded against the defendants on the first and second causes of action in the sum of \$450,000.00 as compensatory damages and in the sum of \$1,350,000.00 as exemplary damages; on the third cause of action in the sum of \$90,000.00 as compensatory damages and in the sum of \$270,000.00 as exemplary damages; on the fourth cause of action in the sum of \$100,000.00 as compensatory damages and in the sum of \$300,000.00 as exemplary damages; on the fifth cause of action in the sum of

\$100,000.00 as compensatory damages and in the sum of \$300,000.00 exemplary damages; on the sixth cause of action in the sum of \$250,000.00 compensatory damages and in the sum of \$750,000.00 exemplary damages; and on the seventh cause of action in the sum of \$500,000.00 compensatory damages and in the sum of \$1,500,000.00 exemplary damages, all of the above with interest thereon from the 5th day of March, 1972, together with the costs and disbursements of this action, including fair and reasonable allowances for counsel fees and other lawful expenses.

/S/ Dan Brecher

DAN BRECHER, ESQ.
Attorney for Plaintiff
Office and P. O. Address
230 Park Avenue
New York, New York 10017
(212) 986-2820

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
ROBERT J. FINE, : 74 Civ. 3116
Plaintiff, :
-against- : ANSWER
THE CITY OF NEW YORK, et al., :
Defendants. :
----- x

Defendant Frank Klein answers the complaint as follows:

As To The First Claim

1. Denies the allegations of paragraph "1" of the complaint, except admits that plaintiff purports to invoke the Court's jurisdiction under the constitutional and statutory provisions therein mentioned.

2. Denies the allegations of paragraph "2" of the complaint.

3. Avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "3" of the complaint, except admits that he is a citizen and resident of the United States and of the State of New York.

4. Avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "4" of the complaint, except admits that he was an attorney in private practice in the City of New York prior to March 5, 1972, and during 1972 and part of 1973.

5. Avers that he lacks knowledge or information

sufficient to form a belief as to the truth of the allegations of paragraphs "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29" and "30", except denies that he had any part in the acts alleged.

As To The Second Claim

6. Answering paragraph "31" of the complaint, repeats his above responses to paragraphs "1" through "30".

7. Avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs "32", "33", "34" and "35" of the complaint, except denies that he had any part in the acts alleged.

As To The Third Claim

8. Answering paragraph "36" of the complaint, repeats his above responses to paragraphs "1" through "35" of the complaint.

9. Avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "37" of the complaint, except denies that he had any part in the acts alleged.

As To The Fourth Claim

10. Answering paragraph "38" of the complaint, repeats his above responses to paragraphs "1" through "37" of the complaint.

11. Avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations

of paragraph "39" of the complaint, except denies that he had any part in the acts alleged.

12. Denies the allegations of paragraph "40" of the complaint.

As To The Fifth Claim

13. Answering paragraph "41" of the complaint, repeats his above responses to paragraphs "1" through "40" of the complaint.

14. Avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "42" of the complaint, except admits that he was retained as counsel for plaintiff in connection with the criminal charges against plaintiff.

15. Denies the allegations of paragraph "43" of the complaint.

As To The Sixth Claim

16. Answering paragraph "44" of the complaint, repeats his above responses to paragraphs "1" through "43" of the complaint.

17. Avers that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs "45", "46" and "47" of the complaint, except denies that he had any part in the acts alleged.

As To The Seventh Claim

18. Answering paragraph "48" of the complaint, repeats his above responses to paragraphs "1" through "47" of the complaint.

19. Denies the allegations of paragraphs "49", "50" and "51" of the complaint.

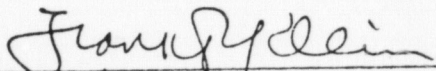
First Affirmative Defense

20. The complaint fails to state any claims against this defendant on which relief can be granted.

Second Affirmative Defense

21. The alleged claims of plaintiff are barred by the applicable Statute of Limitations.

WHEREFORE, this defendant respectfully requests judgment dismissing the complaint as to him on the merits, together with the costs and disbursements of this action and such other and further relief as may be just and proper.


FRANK R. KLEIN
Defendant Pro Se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT J. FINE,

Plaintiff,

-against-

THE CITY OF NEW YORK, PTL. ANTHONY
SALADINO, ESTATE OF ROBERT L. RADTKE,
DET. MICHAEL SASSAMAN, PTL. "JOHN"
STANLEY, PTL. "JOHN" DWYER, PTL. "JOHN"
FISCHER, SGT. "JOHN" MURRAY, FRANK
KLEIN, DAVID FAULKNER, MRS. DOLORES
FAULKNER, MARVYN KORNBERG, ESQ.,
ALBERT GAUDELLI, ESQ. and HERBERT KAHN,
ESQ.,

Defendants.

RF # 719-474
LD # 1185-74

74 CIV 3116

JUDGE BRIANT

The defendants, The City of New York and Michael
Sassaman, Det. William Stanley, sued herein as "John" Stanley,
Ptl. Jess Fisher, sued herein as "John" Fischer, Ptl.
Anthony Saladino, Lt. Francis Murray, sued herein as Sgt.
"John" Murray, and Ptl. Albert Dwyer, sued herein as Ptl.
"John" Dwyer, answering the complaint herein, upon informa-
tion and belief, allege

AS TO THE FIRST CAUSE OF ACTION:

FIRST: Deny each and every allegation contained
in paragraphs of the complaint designated 1, 2, 6, 9, 10,
11, 12, 14, 15, 16, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28,
29, and 30.

SECOND: Deny each and every allegation contained
in paragraphs of the complaint designated 3 and 4 insofar
as the same refer to or may in any way affect the City of
New York except that the City of New York is a municipal
corporation, maintains a Police Department, and the police

officers were members of the Police Department.

THIRD: Denies each and every allegation contained in paragraphs of the complaint designated 5 and 13 inasmuch as the same are ambiguous, and cannot be admitted or denied.

FOURTH: Deny each and every allegation contained in paragraphs of the complaint designated 7 and 8 insofar as the same refer to or may in any way affect defendants.

FIFTH: Deny each and every allegation contained in

paragraph of the complaint designated 17 and 20, insofar as the same recite evidentiary matter which should be reserved for the Court at the trial of this action.

AS TO THE SECOND CAUSE OF ACTION:

SIXTH: Deny each and every allegation contained in paragraph of the complaint designated 31, except as otherwise pleaded herein.

SEVENTH: Deny each and every allegation contained in paragraphs of the complaint designated 32, 33, 34, and 35.

AS TO THE THIRD CAUSE OF ACTION:

EIGHTH: Deny each and every allegation contained in paragraph of the complaint designated 36, except as otherwise pleaded herein.

NINTH: Deny each and every allegation contained in paragraph of the complaint designated 37.

AS TO THE FOURTH CAUSE OF ACTION:

TENTH: Deny each and every allegation contained in paragraph of the complaint designated 38, except as otherwise pleaded herein.

ELEVENTH: Deny each and every allegation contained in paragraphs of the complaint designated 39 and 40.

AS TO THE FIFTH CAUSE OF ACTION:

TWELFTH: Deny each and every allegation contained in paragraph of the complaint designated 41, except as otherwise pleaded herein.

THIRTEENTH: Deny each and every allegation contained in paragraphs of the complaint designated 42 and 43.

AS TO THE SIXTH CAUSE OF ACTION:

FOURTEENTH: Deny each and every allegation contained in paragraph of the complaint designated 44, except as otherwise pleaded herein.

FIFTEENTH: Deny each and every allegation contained in paragraphs of the complaint designated 45, 46, and 47.

AS TO THE SEVENTH CAUSE OF ACTION:

SIXTEENTH: Deny each and every allegation contained in paragraph of the complaint designated 48 except as otherwise pleaded herein.

SEVENTEENTH: Deny each and every allegation contained in paragraphs of the complaint designated 49 and 50 insofar as the same may refer to or affect in any way defendants.

EIGHTEENTH: Deny each and every allegation contained in paragraph of the complaint designated 51.

AS SEPARATE AND DISTINCT DEFENSES,
DEFENDANTS ALLEGE:

NINETEENTH: The plaintiff has failed to set forth a cause of action which is justiciable in the Federal Court,

either under Title 42, United States Code, section 1983, or any related section or sections of the Code.

TWENTIETH: The plaintiff in this action was arrested in March, 1972, and charged with the crimes of sodomy, endangering the welfare of a child, promoting gambling, possession of gambling records in the second degree and possession of weapons and dangerous instruments and appliances as a misdemeanor (paragraph 17 of the complaint.) It is apparent, prima facie, that if anything was done, it must have been in connection with some activity on the part of the plaintiff in this action which caused a lot of people, including the office of the District Attorney, to suspect the plaintiff, so that it was not some random actions on the part of any body that the plaintiff is complaining about. In investigating the alleged activities of the plaintiff, it appears that certain articles were seized as evidence. The plaintiff made a motion to suppress, and the motion was granted. He, the plaintiff in this action, afterwards brought a replevin action against the City of New York and the Property Clerk of the Police Department of the City of New York (an independent agent, by statute: Section 435-4.0 of the Administrative Code of the City of New York) for the recovery of the articles seized. These articles consisted, mostly, of: Forty-six photos of nude males, and photo depicting a boy with gun at head, forty-three 25 calibre bullets, forty-nine 32 calibre bullets, and twelve 38 calibre bullets. The total value of the seized articles the plaintiff himself claimed was Twenty Dollars. An answer was interposed on behalf of the City of New York and the Property

Clerk, which resisted the return of these articles on the ground that the same were contraband, citing as authority *Mc Clendon v. Rosetti*, 460 F. 2nd 111, and there the matter still stands. The replevin action was commenced by an Order To Show Cause dated March 29, 1974, and the Answer was served April 16, 1974. So, it would seem that the plaintiff, not having succeeded in the State Court to recover chattels valued at Twenty Dollars, is now suing in this Court, but the chattels are now worth \$90,000.00 (paragraph 29 of the complaint).

TWENTY-FIRST: The gravamen of the complaint appears to be activity on the part of the police, the office of the District Attorney, and complainants in connection with the arrest of the plaintiff on the charges he has enumerated in his complaint. It is apparent, therefore, that any activity on the part of defendant, The City of New York, its agents, servants or employees in connection with said arrest was done pursuant to the governmental official function of defendant as a municipality, and in conjunction with the office of the District Attorney. For such activity, the City of New York as a municipality, is immune from any liability toward the plaintiff.

TWENTY-SECOND: The plaintiff in this action has filed a Notice of Claim on the defendant, The City of New York, on January 31, 1974, for substantially the same causes of action which are alleged in the present complaint, but, in Section 50e of the General Municipal Law of the State of New York it is a condition precedent to suing the City of New York that the Notice of Claim must be served within

ninety days. This was not done in this case. The Notice of Claim was not served until nearly two years had passed.

TWENTY-THIRD: In addition to the requirements of Section 50e of the General Municipal Law, it is required that a hearing on the claim be held before commencing suit. This is contained in 50h of the General Municipal Law. The plaintiff was sent a Demand For Examination on February 21, 1974, for a hearing on April 25, 1974, but plaintiff did not appear, so that the defense of failure to comply with that statute can be asserted at this point.

TWENTY-FOURTH: Finally, it is required by Section 50i of the General Municipal Law that suits against the City of New York must be brought within one year and ninety days. That Statute of Limitations can now be pleaded in defense of this action.

TWENTY-FIFTH: Defendant, the City of New York denies, generally, the allegations in the complaint and avers that all of the civil rights to which the plaintiff was entitled under the Constitution of the United States of America or the State of New York were carefully afforded the plaintiff at the time of his arrest, and, upon information and belief, all of plaintiff's civil rights were afforded him by all those in official positions who came in contact with him in the matter.

TWENTY-SIXTH: Any activity on the part of defendant, the City of New York, its agents, servants or employees in connection with the plaintiff arose out of the official positions of said agents, servants or employees as police officers or otherwise, and was absolutely impersonal in nature, without any malice or ill-will toward the plaintiff,

and were performed in good faith, and with reasonable and probable cause in the performance of their official duties.

TWENTY-SEVENTH: Any arrest, or other activity that may have been made by the City of New York was done pursuant to information from sources that defendant believed to be reliable, and was done in accordance with what defendant was compelled by law to do under the circumstances. Defendant, the City of New York, therefore, reasserts its defense of immunity in this action.

TWENTY-EIGHTH: Defendant, the City of New York, reasserts the defense that the plaintiff has not stated a cause of action which is justiciable in this Court. The plaintiff is attempting to re-hash the events surrounding his arrest in March, 1972; and, now, after all the Statutes of Limitations have run, he is bringing this action in the Federal Court, under the guise of a civil rights action. The defendant, the City of New York, therefore, demands that this action should be dismissed summarily.

TWENTY-NINTH: Defendants, Det. Michael Sassaman, Det. William Stanley, Ptl. Jess Fisher, Ptl. Anthony Saladino, Lt. Francis Murray and Ptl. Albert Dwyer also assert the defense of the statute of limitations of Section 215 of the Civil Practice Law and Rules, which provides for a one year period in which to commence suit.

AS A CROSS-COMPLAINT AGAINST THE DEFENDANTS, FRANK KLEIN, DAVID FAULKNER, MRS. DOLORES FAULKNER, MARVIN KORNBERG, ESQ., ALBERT GAUDELLI, ESQ., AND HERBERT KAHN, ESQ. IN THE EVENT THAT JUDGMENT IS RENDERED AGAINST IT, THE DEFENDANTS, THE CITY OF NEW YORK, DET. MICHAEL SASSAMAN, DET. WILLIAM STANLEY, PTL. JESS FISHER, PTL. ANTHONY SALADINO, LT. FRANCIS MURRAY, AND PTL. ALBERT DWYER ALLEGE:

THIRTIETH: That at all the times mentioned herein,

the defendant, The City of New York, was and still is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

THIRTY-FIRST: That the plaintiff herein commenced an action in this Court against the defendants to recover damages sustained as alleged in the complaint, the contents of which complaint defendants beg leave to refer to upon the trial of this action as if the same were set forth herein at length.

THIRTY-SECOND: That defendants, The City of New York, Det. Michael Sassaman, Det. William Stanley, Ptl. Jess Fisher, Ptl. Anthony Saladino, Lt. Francis Murray, and Ptl. Albert Dwyer are held liable to the plaintiff, such liability arose out of the affirmative, acts and conduct of the defendants, Frank Klein, David Faulkner, Mrs. Dolores Faulkner, Marvin Kornberg, Esq., Albert Gaudelli, Esq. and Herbert Kahn, Esq., their agents, servants and/or employees, in that, it was on their information or their instructions that defendants acted, and did only what defendants were required by law to do, or such liability was due to the conduct of defendants Klein et al., over which conduct these answering defendants had no control, and, therefore, for which they cannot be responsible, so that the defendants, The City of New York, Det. Michael Sassaman, Det. William Stanley, Ptl. Jess Fisher, Ptl. Anthony Saladino, Lt. Francis Murray, and Ptl. Albert Dwyer are entitled to be indemnified by the said defendants, Klein et al., for the amount of any verdict or judgment which may be recovered against the defendants, The City of New York, and Det. Michael Sassaman, Det. William

Stanley, Ptl. Jess Fisher, Ptl. Anthony Saladino, Lt. Francis Murray, and Ptl. Albert Dwyer.

WHEREFORE, the defendants, The City of New York and Det. Michael Sassaman, Det. William Stanley, Ptl. Jess Fisher, Ptl. Anthony Saladino, Lt. Francis Murray, and Ptl. Albert Dwyer demand judgment dismissing the complaint herein, as to it, with costs, and further demand that the ultimate rights of these defendants and the defendants, Frank Klein, David Faulkner, Mrs. Dolores Faulkner, Marvin Kornberg, Esq., Albert Gaudelli, Esq. and Herbert Kahn, Esq. as between themselves, be determined, and that these defendants have judgment over and against the defendants, Det. Michael Sassaman, Det. William Stanley, Ptl. Jess Fisher, Ptl. Anthony Saladino, Lt. Francis Murray, and Ptl. Albert Dwyer for the amount of any verdict or judgment which shall or may be recovered herein by the plaintiff against these defendants, together with the costs and disbursements of the action and any expenses incurred in the defense thereof.

ADRIAN P. BURKE
Corporation Counsel
Attorneys for Defendants
The City of New York,
Det. Michael Sassaman,
Det. William Stanley,
Ptl. Jess Fisher,
Ptl. Anthony Saladino,
Lt. Francis Murray, and
Ptl. Albert Dwyer
Office and P.O. Address:
Municipal Building
Borough of Manhattan
New York, New York 100 7

SAUL BERNSTEIN

By

SAUL BERNSTEIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ROBERT J. FINE,

Plaintiff,

-against-

THE CITY OF NEW YORK, PTL. ANTHONY
SALADINO, ESTATE OF ROBERT L. RAFTKE,
DET. MICHAEL SASSARIAN, PTL. "JOHN" STANLEY,
PTL. "JOHN" DWYER, PTL. "JOHN" FISCHER,
SGT. "JOHN" MURRAY, FRANK KLEIN, MARVYN
KORNBERG, ESQ., ALBERT GAUDELLI, ESQ. and
HERBERT KAHN, ESQ.,

Defendants.

-----X

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of
MARVYN KORNBERG, sworn to the // day of October, 1974, decision
of Hon. WILLIAM C. BRENNAN, one of the Justices of the Supreme
Court of the State of New York for the County of Queens, complaint
and all of the proceedings heretofore had, the undersigned will
move this Court before the Hon. Judge Charles Brieant Jr., at a
Term for Motions to be held in Room 1106 of the United States
District Courthouse at Foley Square, New York City, New York on
the 25th day of October, 1974 at 9:30 o'clock in the forenoon of
that day or as soon thereafter as counsel can be heard for an order
pursuant to Rule 12 of the Federal Rules of Civil Procedure to
dismiss the complaint herein, as failing to state a claim upon
which relief can be granted, or in the alternative, for an order,
pursuant to Rule 12 to make the complaint herein more definite

and certain, and for such other and further relief as to this Court may be deemed just and proper.

Dated: Forest Hills, New York 11375
October 11th, 1974

Yours, etc.,

HAROLD C. HARRISON, ESQ.
Attorney for Defendant
MARVYN KORNDERG, ESQ.
Office and P.O. Address
118-21 Queens Boulevard
Forest Hills, New York 11375

TO: DAN BRECHER, ESQ.
Attorney for Plaintiff
Office and P.O. Address
230 Park Avenue
New York City, New York

ADRIAN P. BURKE, ESQ.
Attorney for Defendant
CITY OF NEW YORK
Office and P.O. Address
Corporation Counsel
Municipal Building
New York City, New York 10007

LOUIS J. LEFKOWITZ, Attorney General
Attorney for Defendants
ALBERT GAUDELLI & HERBERT KAHN
Office and P.O. Address
Two World Trade Center
New York City, New York 10047

FRANK KLEIN
Defendant Pro Se
Office and P.O. Address
42-15 43rd Avenue
Queens, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT J. FINE;

Plaintiff,

-against-

THE CITY OF NEW YORK, PTL. ANTHONY
SALADINO, ESTATE OF ROBERT L. RAFTKE,
DET. MICHAEL SASERMAN, PTL. "JOHN" STANLEY,
PTL. "JOHN" Dwyer, PTL. "JOHN" FISCHER,
SGT. "JOHN" MURRAY, FRANK KLEIN, DAVID
FAULKNER, MRS. DOLORES FAULKNER, MARVYN
KORNBERG, ESQ., ALBERT GNUDELLI, ESQ. and
HERBERT KAHN, ESQ.,

Defendants.

STATE OF NEW YORK }
COUNTY OF QUEENS } SS:

MARVYN KORNBERG, being duly sworn, deposes and says that he is an attorney and counsellor at law and a defendant in the above entitled action, in which he is represented by HAROLD G. HARRISON, ESQ.,

This is an action by plaintiff to recover damages for the alleged violation of his civil rights. It is brought pursuant to 42 U.S.C. 1983, a statute that authorizes redress for the deprivation of a person's Constitutional rights, by persons acting under color of State law. The complaint contains seven causes of action. However, because of the slovenly draftsmanship, it is difficult to decipher whether plaintiff makes claim for damages in each count against each of the defendants named in the action, and so, your deponent, for the purposes of this motion, will address himself to each claim, as though it were asserted against

him.

On March 5th, 1972, Patrolman Kiselewski of the 109th Precinct of the New York City Police Department was alerted that a young man, who turned out to be the defendant DAVID FAULKNER, age sixteen, was trying to sell a gun in a Queens bar. The patrolman found the young man in possession of a pistol. Therefore, he took him to the 109th Precinct for questioning. It developed that young Faulkner was a resident of Bayonne, New Jersey, who had met plaintiff in the Times Square area and then went to live with him in Defendant's Flushing apartment. He told the police that the gun in question belonged to plaintiff, with whom he was involved in a homosexual relationship. Several police officers took Faulkner to plaintiff's apartment. They entered the unlocked door and made a search of the premises. The following day, Faulkner accompanied by the police officers and deponent, who was then representing the young man, as his attorney, returned to plaintiff's apartment, where in plaintiff's absence, a search was made that produced gambling notations, cassette recordings of gambling bets, bullets and obscene photographs taken by plaintiff, including that of young Faulkner nude, with plaintiff holding a pistol to his head, that would seem to corroborate Faulkner's complaint that he had been abused sexually by plaintiff. Eventually, three separate indictments were rendered against plaintiff, for sodomy, for illegal possession of a firearm and for illegal possession of gambling records. On January 17th, 1974, following an evidentiary hearing, the Hon. William C. Brennan, a Justice of the Supreme Court of the State of New York for Queens County

rendered a decision, a copy of which is annexed, suppressing the evidence seized from defendant, on grounds that Faulkner, was without standing to consent to the searches, not being a regular resident of the apartment and for want of a search warrant. The suppression of the evidence seized, paved the way for the dismissal of one of the indictments and another indictment which is currently on a suspension calendar awaiting disposition, for insufficiency of evidence. Plaintiff then commenced this civil rights action against the City of New York, various police officers, Faulkner and his mother, defendant, FRANK KLEIN, the attorney who represented him on this matter, deponent, who represented David Faulkner and the two Assistant District Attorneys, who presented this matter to the Grand Jury and who prosecuted plaintiff.

The first claim in the complaint charges that there was a "forced entry" into plaintiff's home by defendants, who "unlawfully searched rooms" in it and seized "evidence utilized in the aforesaid criminal proceedings," which was illegal, without specifying the nature of the evidence allegedly seized. The first claim fails to state a claim upon which relief can be granted against deponent for the simple reason that it fails to set facts that he was acting under color of law, when he accompanied the police officers who made the search. Indeed, paragraph fourteen of the complaint pleads that the "acts were committed with the knowledge and consent of the said defendants Faulkner and Kornberg" by police officers. Whether deponent had notice of the acts complained of and consented to their execution by the police is irrelevant. Nowhere are facts stated that the police acted as

anything but agents of the state. Given that deponent is a private attorney, who was not, himself, acting under color of State law and that the police were carrying out a routine investigation under color of State law, by no possibility does deponent's acts render him liable to plaintiff under the Civil Rights Law, whether he approved of them or otherwise. At the very most, the first claim in the complaint, pleads a cause of action against deponent for trespass, since there are no facts alleged that he was acting under color of law. A trespass action would only be cognizable in a State court.

Plaintiff's second claim is somewhat duplicitious, in that he pleads that he was denied his Constitutional right to a "search warrant" when his home was allegedly searched, which is tantamount to pleading that his Constitutional rights were violated by the illegal search depicted in his first claim. For the same reasons, the second claim fails to set forth a claim against deponent upon which relief can be granted, in that there is no allegation that deponent, a private attorney, was acting under color of law, nor that the police were doing anything other than performing their governmental duty to investigate a crime. In the decision rendered after an evidentiary hearing suppressing the evidence seized from plaintiff, Queens Supreme Court Justice Brennan made the following findings, that plaintiff does not suggest are in error:

"In the case before us, the police certainly had ample cause for investigation. A crime had been committed; a gun was found; an investigation was in order. Once the complainant (Faulkner) indicated a link with

the defendant, it was certainly reasonable for them to go to his apartment and interrogate him."

The police were certainly acting independently of deponent to perform their statutory duties to investigate crime. There is no suggestion in plaintiff's complaint, that deponent was along at the time of the search for anything other than to protect the interests of his client, Faulkner, and so, by no possibility was he acting under color of law.

Plaintiff's third claim is that defendants allegedly converted his money and property, a claim that does not bespeak of a civil rights violation, but rather of a common law cause of action for conversion, cognizable only in a state court. Nor is there any suggestion that deponent, assuming arguendo that he did convert any property belonging to plaintiff, was acting under color of State law. Therefore, the third claim is not cognizable against him.

Plaintiff's fourth claim is that "some of the defendants conspired to extort money from plaintiff," without identifying deponent as one of them. The usual fatality permeates this cause of action, to wit, that there are no facts alleged charging deponent with acting under color of law.

Plaintiff's fifth claim pleads that "Mrs. Faulkner conspired with certain of the other defendants in an attempt to have the plaintiff pay money to them in return for their assistance in obtaining the dropping of the criminal charges against plaintiff," without setting forth facts that deponent was one of these

allegedly conspiring defendants, and if so, that he was acting under color of law. In this cause of action, plaintiff alleges that a payment of \$550.00 was made to his attorney, Frank Klein, concerning which no connection is pleaded that would tie deponent to such transaction.

The sixth cause of action charges defendant Saladino, a police officer, with assault, slander, harassment and abuse and further accuses defendant Saladino with telling a third person that plaintiff is a pervert. Aside from the fact that these alleged torts do not spell out any violation of plaintiff's Constitutional rights, but rather, that he was allegedly a victim of several common law torts, that would be actionable only in a State court, it is difficult to understand how deponent can be cast in liability for the tort of another person, Officer Saladino. Moreover, the cause of action suffers from the same defective thread, that no facts are alleged that would show deponent to be acting under color of law.

The seventh cause of action charges that legal fees were paid to defendant Frank Klein, plaintiff's lawyer, for services that Klein either failed to render or rendered in a negligent, fraudulent and illegal manner. This malpractice action can only be entertained in a state tribunal. Nor is there any showing how plaintiff claims that deponent is liable for his attorney's shortcomings, nor how deponent allegedly acted under color of law, in regard to whatever he is alleged to have done.

It is respectfully submitted that each of the seven counts of the complaint fail to set forth facts upon which relief can be granted, and therefore, they should be dismissed. However, should this Court not dismiss the complaint, or the counts thereof, an order should be made and entered requiring the plaintiff to serve and file a new complaint making more definite and certain the allegations of the complaint to define the manner in which deponent allegedly acted under color of law and to set forth which defendants, plaintiff seeks to hold liable, on each of the counts in his complaint.

151
MARVYN KORNBERG

Sworn to before me this
11 day of October, 1974

18
NOTARY PUBLIC

HAROLD S. HARRISON
NOTARY PUBLIC State of New York
No. 41-01-1115
Qualified in Queens County
Term Expires March 20, 1976 76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

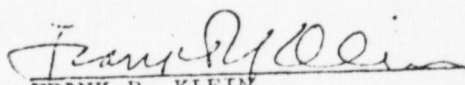
----- x
ROBERT J. FINE, : 74 Civ. 3116 (CLB)
Plaintiff, :
-against- : NOTICE OF MOTION
THE CITY OF NEW YORK, et al., :
Defendants. :
----- x

S I R S :

PLEASE TAKE NOTICE, that upon the previously filed affidavit of Marvyn Kornberg, sworn to October 11, 1974, and upon the previously filed notices of motion and memorandums of law on behalf of defendant Marvyn Kornberg and on behalf of defendants Albert Gaudelli and Herbert Kahn, and upon the exhibits thereto and documents referred to therein, the undersigned will move this Court before Honorable Charles L. Bricant, Jr., U.S.D.J., in Room 1106 of the United States Courthouse, Foley Square, New York, New York, on October 25, 1974 at 9:30 a.m. or as soon thereafter as counsel can be heard, for an order pursuant to Rule 12 of the Federal Rules of Civil Procedure, dismissing the complaint on the ground that it fails to state a claim on which relief can be granted and on the ground that the Court lacks jurisdiction of the subject matter of the action, or, in the alternative, for an order requiring the plaintiff to serve a more definite statement of his alleged claims, and for such other and further relief as may be just and proper.

Dated: Long Island City, New York
October 23, 1974

Yours, etc.


FRANK R. KLEIN
Defendant Pro Se
42-15 43rd Avenue
L.I.C., New York 11104

TO:

DAN BRECHER, ESQ.
Attorney for Plaintiff
Office and P.O. Address
230 Park Avenue
New York, New York

HAROLD G. HARRISON, ESQ.
Attorney for Defendant
Marvyn Kornberg, Esq.
Office and P.O. Address
118-21 Queens Boulevard
Forest Hills, New York

ADRIAN P. BURKE, ESQ.
Attorney for Defendant
City of New York
Office and P.O. Address
Corporation Counsel
Municipal Building
New York, New York 10007

LOUIS J. LEFKOWITZ, Attorney General
Attorney for Defendants
Albert Gaudelli and Herbert Kahn
Office and P.O. Address
Two World Trade Center
New York, New York 10047

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT J. FINE,

Plaintiff

-against-

THE CITY OF NEW YORK, PTL. ANTHONY SALADINO;
ESTATE OF ROBERT L. RADTKE, DET. MICHAEL
SASSAMAN, PTL. "JOHN" STANLEY, PTL. "JOHN"
DWYER, PTL. "JOHN" FISCHER, EGT. "JOHN"
MURRAY, FRANK KLEIN, DAVID FAULKNER, MRS.
DOLORES FAULKNER, HARVYN KORNBERG, ESQ.,
ALBERT GAUDELLI, ESQ. and HERBERT KAHN, ESQ.

Defendants

NOTICE OF MOTION
74 Civ. 3116
(J. Brieant)

S I R S:

PLEASE TAKE NOTICE that upon the complaint and summons,
dated July 22, 1974 and the memorandum of law for defendants,
Gaudelli & Kahn dated October 17, 1974 and all of the proceedings
heretofore had, the undersigned will move this Court before the
Hon. Judge Charles Brieant, Jr., at a term for motions to be held
in room 1106 of the United States Courthouse at Foley Square,
New York City, New York on the 25th day of October, 1974 at
9:30 in the forenoon of that day or as soon thereafter as counsel
can be heard for an order pursuant to Rule 12 (b) (6) of the
Federal Rules of Civil Procedure to dismiss the complaint herein,
as failing to state a claim upon which relief can be granted,
in the alternative, for an order pursuant to Rule 12(b) (6) to make
the complaint herein more definite and certain, and for such other
and further relief as this Court may be deemed just and proper.

Dated: New York, New York
October 17, 1974

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants Gaudelli &
Kahn
Office & P. O. Address
Two World Trade Center
New York, New York 10047
Tel. (212) 488-5896

TO:

DAN BRECHER, Esq.
Attorney for Plaintiff
Office & P.O. Address
230 Park Avenue
New York, New York

HAROLD C. HARRISON, Esq.
Attorney for Defendant
Marvyn Kornberg, Esq.
Office & P.O. Address
118-21 Queens Boulevard
Forest Hills, New York 11375

Adrian P. Burke, Esq.
Attorney for defendant
City of New York
Office & P.O. Address
Corporation Counsel
Municipal Building
New York, New York 10007

Frank Klein
Defendant Pro Se
Office & P.O. Address
42-15 43rd Avenue
Queens, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X 74 Civ. 3116 (CLB)

ROBERT J. FINE,

Plaintiff,

-against-

THE CITY OF NEW YORK, PTL. ANTHONY
SALADINO, ESTATE OF ROBERT L. RADTKE,
DET. MICHAEL SASSAMAN, PTL. "JOHN"
STANLEY, PTL. "JOHN" DWYER, PTL. "JOHN"
FISCHER, SCT. "JOHN" MURRAY, FRANK
KLEIN, DAVID FAULKNER, MRS. DOLORES
FAULKNER, MARVYN KORNBERG, ESQ.,
ALBERT CAUDELLI, ESQ. and HERBERT
KAHN, ESQ.,

Defendants.

-----X
PLAINTIFF'S INTERROGATORIES TO
DEFENDANT PTL. ANTHONY SALADINO ("SALADINO")
SET NO. 1

Pursuant to Rule 33 of the Federal Rules of Civil Pro-
cedure, plaintiff hereby requests that the defendant SALADINO in
the above-captioned action serve upon plaintiff sworn answers to
the Interrogatories set forth below.

A. DEFINITIONS

1. As used herein, "documents" include any written,
recorded or graphic matter however produced or reproduced, inclu-
ding but not limited to correspondence, telegrams, other written
communications, contracts, agreements, notes, memoranda, analyses,
projections, work papers, diaries, calendars or any other writings
including copies of any of the foregoing now in the possession,
custody or control of any of the defendants, their employees and

agents, their merged or acquired predecessors, their present or former directors, officers, counsel, agents, employees and all persons acting on his or their behalf.

2. As used herein, "identify" or "identity" used in reference to an individual person means to state his full name and present address, his present or last known position and business affiliation, and his position and business affiliation, and his position and business affiliation at the time in question. "Identify" or "identity" when used in reference to a document means to state the date and author, type of document (e.g., letter, memorandum, telegram, chart, etc.), or some other means of identifying it, and its present location or custodian.

3. To the extent that information sought by any interrogatory can be furnished by reference to the answer furnished to another interrogatory, such practice will be acceptable to plaintiff. However, separate answers should be accorded in all cases, and interrogatories should not be joined together and accorded a common answer.

4. Unless otherwise indicated, all interrogatories should be answered for the period of January 1, 1972 to the present.

B. INTERROGATORIES

auth
5. Identify every name by which the defendant SALADINO is or has been known.

6. Identify the defendant SALADINO.

7. Describe generally each category of business activity in which SALADINO was engaged in 1972.

8. Identify each person with whom the defendant SALADINO was associated as a team member or partner as a police officer during March, 1972.

9. Set forth the defendant SALADINO's gross and net annual incomes for the calendar years ending:

December 31, 1968
December 31, 1969
December 31, 1970
December 31, 1971
December 31, 1972
December 31, 1973

10. State whether the defendant SALADINO's employer has presently, or has had, during the period of January 1, 1972 to the present, a policy for the retention or destruction of records, documents or files, and if so, state:

a. The terms of each such policy and the general category of the documents covered;

b. In the event of any change of policy, the dates of such changes and their nature;

c. Whether, pursuant to any of the above-described policies or otherwise, any documents or categories of documents would normally be destroyed during the pendency of this case and, if so, identify such documents.

11. Identify each communication relevant to the plaintiff or to the allegations of the complaint herein sent by the defendant SALADINO to any other party herein or received by the defendant SALADINO from any other party herein from January 1, 1972 to the present and include the following information:

a. The date each communication was sent or received.

b. The general content of each such communication.

12. Identify each document filed by the defendant SALADINO with any governmental agency relevant to the plaintiff or to the allegations of the complaint herein, and with regard to each such document include the following information:

- a. The date each such communication was sent to said agency and the name and address of said agency;
- b. The purpose and general content of each such document;
- c. Identify any and all correspondence between the said agency and the defendant SALADINO with regard to each such document.

13. Identify each meeting of or contact by SALADINO with the defendants MRS. DOLORES FAULKNER or DAVID FAULKNER during 1972, 1973 and 1974, and with respect to each such meeting or contact, state the following:

- a. The time, place and date;
- b. The identity of each person present;
- c. The identity of each document recording or referring to any matters covered by this interrogatory;
- d. The reason for each such meeting or contact;
- e. The matters discussed at each such meeting or contact;
- f. Any payments of any moneys by the defendant SALADINO to MRS. DOLORES FAULKNER or DAVID FAULKNER;
- g. Any payments of any moneys by the defendants MRS. DOLORES FAULKNER or DAVID FAULKNER to the defendant SALADINO.
- h. Any property transferred between the defendants.

14. Identify each meeting of or contact by SALADINO with the defendants ROBERT L. RADTKE ("RADTKE"), FRANK KLEIN ("KLEIN"), MICHAEL SASSAMAN ("SASSAMAN") or MARVYN KORNBERG ("KORNBERG") during the time period relevant herein and with regard to each such meeting state the following:

- a. The time, place and date;
- b. The identity of each person present;
- c. The reason for each such meeting or contact;
- d. The matters discussed at each such meeting or contact;
- e. The identity of each document recording or referring to the matters covered by this interrogatory;
- f. Any payments of any moneys by the defendant SALADINO to any of the defendants RADTKE, KLEIN, SASSAMAN or KORNBERG;
- g. Any payments of any moneys by the defendants RADTKE, KLEIN, SASSAMAN or KORNBERG to the defendant SALADINO.
- h. Any property transferred between the defendants.

15. Identify each meeting of or contact by SALADINO with the defendants "JOHN" STANLEY ("STANLEY"), "JOHN" DWYER ("DWYER"), "JOHN" FISCHER ("FISCHER"), "JOHN" MURRAY ("MURRAY"), ALBERT GAUDELLI ("GAUDELLI") or HERBERT KAHN ("KAHN") during the time period relevant herein and with regard to each such meeting state the following:

- a. The time, place and date;
- b. The identity of each person present;
- c. The reason for each such meeting or contact;

d. The matters discussed at each such meeting or contact;

e. The identity of each document recording or referring to the matters covered by this interrogatory;

f. Any payments of any moneys by the defendant SALADINO to any of the defendants STANLEY, DWYER, FISCHER, MURRAY, GAUDELLI or KAHN;

g. Any payments of any moneys by the defendants STANLEY, DWYER, FISCHER, MURRAY, GAUDELLI or KAHN to the defendant SALADINO;

h. Any property transferred between the defendants.

16. Identify any criminal or administrative proceedings to which the defendant SALADINO has been made a party defendant or respondent and include as to each such proceeding the following information:

a. A general description of the subject of the charge;

b. Where and when each proceeding was filed;

c. If the proceedings have been terminated, the result of the proceedings;

d. If the proceedings are extant, the current status of the proceedings.

17. Identify and describe all documents which involve any communication by or to SALADINO including communications to or from any government agency or to others concerning the following:

a. Investigations by and findings of the Queens District Attorney's Office or by the United States Attorney's Office with regard to possible false and misleading statements made by DAVID FAULKNER;

b. Investigations by and findings of the Office of Maurice Nadjari with regard to charges against any of the defendants herein;

c. Investigations by and findings of any governmental agency with regard to the payment of money by plaintiff herein to SALADINO and others as alleged in the complaint herein at paragraphs "39", "40", "42" and "43".

18. a. State whether any person has filed any complaint with any agency or governmental department with regard to actions of the defendant SALADINO while performing his duties as a police officer;

b. With regard to any such complaint, identify the complainant and the agency or department to which the complaint was made;

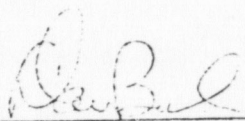
c. Set forth the substance of any such complaint;

d. If there has been a proceeding or investigation with regard to such complaint, state the result of such proceeding or investigation.

19. With regard to the allegations of the complaint herein at paragraphs "39", "40", "42" and "43", state whether

the defendant SALADINO ever received, gave, paid or transferred to any of the other defendants herein any moneys or property during 1972, 1973 or 1974.

Dated: New York, New York
October 31, 1974



DAN BRECHER, ESQ.
Attorney for Plaintiff
230 Park Avenue
New York, New York 10017
(212) 986-2820

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ROBERT J. FINE,

Plaintiff,

-against-

THE CITY OF NEW YORK, PTL. ANTHONY
SALADINO, ESTATE OF ROBERT L. RADTKE,
DET. MICHAEL SASCAMAN, PTL. "JOHN"
STANLEY, PTL. "JOHN" DWYER, PTL. "JOHN"
FISCHER, SGT. "JOHN" MURRAY, FRANK
KLEIN, DAVID FAULKNER, MRS. DOLORES
FAULKNER, MARVYN KORNBERG, ESQ.,
ALBERT GAUDELLI, ESQ. and HERBERT
KAHN, ESQ.,

Defendants.

DEFENDANT'S
ANSWERS
TO
INTERROGATORIES

74 Civ. 3116

Judge Bricant

-----x
The defendant Anthony Saladino as and for his
answers to the Plaintiff's Interrogatories, upon information
and belief, alleges as follows:

5. Anthony Saladino
88 Precinct
298 Classon Avenue
Brooklyn, N.Y.
6. See answer to #5
7. New York City Police Department-Police Officer
8. Police Officer George Herr - 28th Precinct.
9. On advice of Counsel, decline to answer at this
time.
10. I cannot answer concerning matters of Police
Department policy.
11. None other than the summons and complaint in
this action.
12. None

13. (a) (b) (c) (d) (e) During 1972 I had contact and casual conversation with Mrs. Dolores Faulkner and David F. e.g., greetings, dates of adjournments etc., each time that the criminal case appeared on the calendar in Criminal Court, Queens County, Kew Gardens N.Y.

During 1973, I saw them in the District Attorney's Office on one occasion. There was no conversation.

During 1974, I do not recall any contact.

(f). No payment of money was ever made by me to Mrs. Dolores Faulkner or David Faulkner.

(g) No payments of money were ever made by Mrs. Dolores Faulkner or David Faulkner to me.

14.a-b On March 7, 1972 Marvin Kornberg was present and spoke to me in the complaint room of the Criminal Court, Queens County, Kew Gardens, N.Y.

c. I was present on official police business. I cannot answer for Kornberg.

d. Kornberg suggested to me that there was sufficient evidence to include a charge of "coercion" as well as sodomy against Fine.

e. The felony affidavit signed by David Faulkner and filed with the Clerk of the Court March 7, 1972.

15. All of the individuals except Gaudelle and Kahn referred to in this item were at one time police officers assigned to the 109th precinct during the time I was assigned there - I had almost daily contact with some or all of them depending on our various tours of duty.

I never paid any money to any one of them.

No one of them ever paid any money to me.

During November 1972 I, in the presence of my attorney, was questioned by, Asst. D.A. Gaudelli. I had no further contact with him since then.

16. I have never been advised of any criminal or administrative proceedings against me.

17.a. None

17.b. None

c. None

18. I am unable to answer for "any person" other than myself.

Respectfully submitted,

~~Anthony Salatin~~
~~Corporation Counsel~~
P.O. Anthony Salatin

Sworn to before me
this 22 day of
November 1974.

Patrick J. Ryan

Patrick J. Ryan
Notary Public, State of New York
No. 10000000000
Qualified 10/20/76
Commission Expires 10/20/80

Memo-Decision & Order
ORIGINAL

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK
 -----X

ROBERT J. FINE,

Plaintiff, :

-against-

THE CITY OF NEW YORK, PTL. ANTHONY :
 SALADINO, ESTATE OF ROBERT L. RADTKE, :
 DET. MICHAEL SASSAMAN, PTL. "JOHN" :
 STANLEY, PTL. "JOHN" DAYER, PTL. :
 "JOHN" FISCHER, SGT. "JOHN" MURPHY, :
 FRANK KLEIN, DAVID FAULKNER, MRS. :
 DOLORES FAULKNER, MARVYN KORNBERG, :
 ESQ., ALBERT CAUDELLI, ESQ. and :
 HERBERT KAHN, ESQ., :

Defendants. :
 -----X

Brieant, J.

74 Civ. 3116-CLB

MEMORANDUM AND ORDER
 DISMISSING AS TO
 CERTAIN DEFENDANTS ONLY

#41484

MICROFILM
 APR 26 1974

Defendants Gaudelli and Kahn, and defendant Klein, as well as defendant Kornberg, have moved, by three separate notices of motion, to dismiss the complaint herein for failure to state a claim, pursuant to Rule 12(b)(6), F.R.Civ.P. In addition, defendants moved alternatively for a direction pursuant to Rule 12(e) to make the complaint more definite and certain.

In this action brought under 42 U.S.C. §1981, plaintiff charges that defendants Gaudelli and Kahn, "acting in their

capacities as assistant district attorneys" presented evidence of a crime to a state grand jury. The evidence was later suppressed as having been obtained as a result of an unlawful search.

As no facts are alleged on the part of these defendants which are not within their official responsibility, they are immune under the circumstances of this case. See that portion of the opinion in Manfredonia v. Barry, 336 F.Supp. 765, 768 (E.D.N.Y. 1971), which dismissed as to defendant Aspland therein, and authorities therein cited.

While we would prefer that the movants come forward with affidavits showing that they were acting only in their official capacity, [Cf. Bishop v. Golden, 302 F.Supp. 502, 508 (E.D.N.Y. 1969)] the fact is that plaintiff has pleaded only conclusions, and the well considered opinion of Mr. Justice William C. Brennan of the New York State Supreme Court, Queens County, rendered on January 17, 1974 in a proceeding to which this plaintiff was a party of record, is in itself a sufficient factual showing that Gaudelli and Kahn were acting within the scope of their official immunity. Indeed, we would have arrived

at a sorry state if the mere granting of a suppression motion in a criminal case in state court, without more, could subject prosecutors to the harassment of a civil rights case in this Court.

Movant Kornberg, a private attorney, who represented the complainant Faulkner in the same criminal proceeding, is charged with having notice of and having consented to the unlawful acts of police officers in searching plaintiff's apartment.

Insofar as concerns defendant Kornberg, it appears clearly from the face of the complaint that he was acting at all times in a private capacity as attorney for Faulkner. There is no allegation that he acted under color of state law, nor could there be. Certain other allegations against him are at most common law torts, and do not rise to the level of acts prohibited by the aforementioned statute.

The allegations against Frank Klein show that he too was acting, not under color of state law, but in the capacity of a private attorney, then representing plaintiff in a state criminal proceeding. At most, plaintiff pleads a claim for tort, or professional malpractice, with respect to which this Court

lacks subject matter jurisdiction. --

Recognizing that he states no federal claim against Kornberg or Klein, plaintiff in a memorandum submitted on this motion (p.3) argues that:

"even assuming that the Complaint's causes of action against KORNBERG are not ordinarily heard in the federal courts, they may still be maintained under the policy of ancillary jurisdiction ... as claims alleging trespass, conversion, false arrest, malicious prosecution, larceny, invasion of privacy, prima facie tort and extortion."

Exercise of pendent or ancillary jurisdiction is directed to our sound discretion. We should not reach out for a trespass q.c.f. case which belongs in state court, particularly where, as here, questions of collateral estoppel under state law may arise. The effect of a decision of New York Supreme Court should best be determined in the Court which rendered it.

It appears that there is no claim stated against the defendant City of New York under the federal statute. The Court sees no basis to reach out to assert ancillary jurisdiction over that defendant and dismisses as to it on the Court's own motion pursuant to Rule 12(h)(3), F.R.Civ.P.

The motions are granted. There is no just reason for delay. Rule 54(b), F.R.Civ.P. Our Clerk shall enter final judgment in favor of all four movants and defendant City dismissing the complaint and denying all relief as to them.

So Ordered.

Dated: New York, New York
November 22, 1974

Charles L. Briant Jr.

CHARLES L. BRIANT, JR.
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT J. FINE,

Plaintiff,

-against-

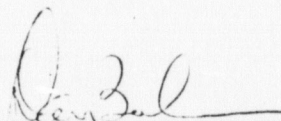
THE CITY OF NEW YORK, et al.,

Defendants.

FILE NO. 3116 (CLB)

NOTICE OF APPEAL

Notice is hereby given that ROBERT J. FINE plaintiff
above named hereby appeals to the United States Court of Appeals
for the Second Circuit from the order of final judgment
dismissing the Complaint against the defendants Gaudelli,
Kahn, Klein, Kornberg and the City of New York entered in
this action on the 6th day of December, 1974.


DAN BRECHER, ESQ.
Attorney for Plaintiff FINE
230 Park Avenue
New York, New York 10017
212-986-2820

Notice List:

Louis J. Lefkowitz, Attorney General
Barbara Resnicoff, Of Counsel
Attorney for Defendants Albert Guardelli, and Herbert Kahn
Two World Trade Center
New York, New York 10047

Adrian P. Burke, Corporation Counsel
Saul Bernstein, Esq.
Attorneys for Defendants The City of New York, Ptl. Arthur
Saladino, et al.
Municipal Building
New York, New York 10007

Defendant Frank Klein, Pro Se
42-15 43rd Avenue
Long Island City, New York 11104

Harold C. Harrison, Esq.
Attorney for Defendant Marvyn Kronberg
118-21 Queens Boulevard
Forest Hill, s New York 11375

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

ROBERT J. FINE, :

Plaintiff, :

-against- :

74 Civ. 3116

THE CITY OF NEW YORK, PTL. ANTHONY :

SALADINO, ESTATE OF ROBERT L. RADTKE, Judge Brieant :

DET. MICHAEL SASSAMAN, PTL. "JOHN" :

STANLEY, PTL. "JOHN" DWYER, PTL. :

"JOHN" FISCHER, SGT. "JOHN" MURRAY, :

FRANK KLEIN, DAVID FAULKNER, MRS. :

DOLORES FAULKNER, MARVYN KORBERG, :

ESQ., ALBERT GAUDELLI, ESQ. and :

HERBERT KAHN, ESQ., :

Defendants. :

- - - - - x

DEPOSITION of PTL. MICHAEL SASSAMAN,
one of the Defendants, taken by Plaintiff,
pursuant to Notice dated October 31, 1974,
held at the offices of Messrs. Wynn & Atlas,
230 Park Avenue, New York, New York, on



Certified Shorthand Reporters

(212) 267-2228

132 NASSAU STREET
NEW YORK, N. Y. 10038

65a

November 26, 1974, at 3:00 P. M., before
DANIEL FOX, a Shorthand Reporter and Notary
Public of the State of New York.

--000--

A P P E A R A N C E S :

DAN BRECHER, ESQ.,
BY: Messrs. WYNN & ATLAS, ESQS.
Attorneys for Plaintiff
230 Park Avenue
New York, New York

BY: RICHARD H. WYNN, ESQ.,
Of Counsel

ADRIAN P. BURKE, ESQ.
Attorney for Defendant CITY OF NEW YORK
Municipal Building
New York, New York 10007

BY: THOMAS VURCHILL, ESQ.
-and-
RICHARD STEINBERG, ESQ.,
Of Counsel

FRANK KLEIN, ESQ.,
Attorney Pro Se
42-15 43rd Avenue
Long Island City, New York 11104

LOUIS J. LEFKOWITZ, ESQ.
Attorney for Defendants GAUDELLI and KAHN
2 World Trade Center
New York, New York

BY: BARBARA S. RESNICOFF, ESQ.,
Of Counsel

1
2
3 IT IS HEREBY STIPULATED AND AGREED, by
4 and among counsel for the respective parties
5 hereto, that the filing, sealing and certifica-
6 tion of the within deposition shall be and the
7 same are hereby waived;

8 IT IS FURTHER STIPULATED AND AGREED
9 that all objections, except as to the form
10 of the question, shall be reserved to the time
11 of the trial;

12 IT IS FURTHER STIPULATED AND AGREED
13 that the within deposition may be signed before
14 any Notary Public with the same force and effect
15 as if signed and sworn to before the Court.
16
17

18 --o0o--
19
20
21
22
23
24
25

1

4

2

M I C H A E L S A S S A M A N , of 78-04 147th

3

Street, Flushing, New York, having been first

4

duly sworn by DANIEL FOX, a Notary Public of

5

the State of New York, was examined and testified

6

as follows:

7

EXAMINATION BY MR. WYNN:

8

Q What is your name?

9

A Michael Sassaman.

10

Q What is your address?

11

A 78-04 147th Street, Flushing.

12

Q Detective Sassaman, when did you become

13

a police officer in the City of New York?

14

A October 1st, 1962.

15

Q When did you become a detective?

16

A May 7, 1968.

17

Q Is that your current rank?

18

A Yes.

19

Q In March of 1972, what was your assignment?

20

A I was assigned to the Queens Homicide

21

Squad, 16th District.

22

Q That was on March 5, 1972, you were so

23

assigned; is that correct?

24

A Yes.

25

Q Did you have a partner or were you working

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

68a

1

2

alone?

3

A We worked usually in a group of about

4

seven fellows.

5

Q On or about March 5, 1972, was Detective

6

Robert Radtke in your group?

7

A Yes.

8

Q Who else was in your group?

9

A Several fellows whose names escape me

10

right now without consulting roll call.

11

Q Will you produce the names of the other

12

detectives who were in your group; can you produce them?

13

A I could, yes.

14

Q Will you please produce them?

15

A Yes.

16

17

18

19

Q On or about March 6, 1972, did you go to

20

an apartment 2-E at 132-48 41st Road in Flushing?

21

A If that is the apartment of Mr. Fine, yes.

22

Q This was on March 6th, 1972?

23

A Yes.

24

Q With whom did you go?

25

A Detective Radtke, Mr. Marvyn Kornberg, an

MANHATTAN REPORTING CORP.

132 NASSAU STREET, NEW YORK 10038 - 267-2228

69a

1 attorney, and David Faulkner.

2 Q Now, did you all go together?

3 A Yes.

4 Q Where did you meet?

5 A At the 16th Homicide offices.

6 Q Where were they located at the time?

7 A At the time, they were located in the
8 105th Precinct, which is now the 113th Precinct, which
9 is located on Baisley Boulevard in South Jamaica.

10 Q What time did you meet there?

11 A I came to work at 4:00 that day.

12 Q When you came to work were the other
13 gentlemen present?

14 A As I recall, they were not present.
15 Detective Radtke was present, and then in the course
16 of the evening, Mr. Kornberg and Mr. Faulkner arrived.

17 Q Did you have any conversation with
18 Detective Radtke prior to going to Mr. Fine's apartment?

19 A Briefly, yes.

20 Q Where did this conversation take place?

21 A In the office, a large squad room office
22 of the 16th.

23 Q Who was present?

24 A Various people, at the time. It was not
25

1 a conversation, more of a comment or a statement.

2 Q Would you tell us what Detective Radtke
3 said?

4 A Initially he said, when I first arrived
5 he had many people coming in on this case.

6 Q On what case?

7 A The case he got a telephone call on the
8 night before.

9 Q What case was that?

10 A The case concerning a boy making an
11 allegation of some kind of sexual assault against
12 himself.

13 Q Of sodomy; is that right?

14 A Yes.

15 Q Did you know the name of the complainant
16 at that time?

17 A No.

18 Q Did you know the name of the alleged
19 defendant at that time?

20 A No.

21 Q Did you have any further conversation
22 with Detective Radtke prior to going to Mr. Fine's
23 apartment?

24 A After he had been speaking with Mr.

1
2 Kornberg and the boy at some time, he had come out and
3 approached me and said we are going to go over and
4 lock that guy up.

5 Q Now, let's stop there for a moment.

6 Were you present when Detective Radtke
7 had a conversation with Mr. Kornberg and David Faulkner?

8 A No.

9 Q Were you present at the station house
10 when Mr. Kornberg and Mr. Faulkner came into the station
11 house?

12 A I was there. I can't say specifically
13 I knew of them coming in and out. We have several
14 people coming in and this particular thing -- I know
15 Mr. Kornberg by sight. I may have seen him come in
16 but since this was Radtke's case, I made no particular
17 notation as to his appearance.

18 Q Do you know how long Detective Radtke
19 spoke with Mr. Faulkner and Mr. Kornberg before he had
20 this conversation with you saying that we are going
21 to see if Fine is present to arrest him?

22 A Not really, I would say --

23 MR. VURCHILL: If you know, say so.

24 If you don't know, say so.

25 THE WITNESS: I don't know.

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Q Did Detective Radtke tell you what he had discussed with Mr. Kornberg and Mr. Faulkner prior to your going to the apartment?

A No, not an in-depth discussion.

Q Did he tell you anything about their discussions?

A He mentioned the circumstances of the case and that he wanted to arrest this fellow for the charge of molesting the boy, and that he lived in an apartment and I am familiar with the area so I should know where it is.

He discussed some of the things the man is supposed to have done, for instance, molesting different boys, and he is a really nasty type of person.

That is what he told me.

Q This is Radtke talking to you; is that correct?

A Yes, this is not a conversation where he said to me this is what is going on. He would discuss, he made mention of this at various times from there just saying, come on, let's go over there now, and then this discussion would more or less continue while we were going out there.

Q How long did it take you to go from the

1
2 station house to Mr. Fine's apartment?

3 A About ten minutes.

4 Q You all went in one car?

5 A As I recall, yes.

6 Q Who drove?

7 A I did.

8 Q What time did you arrive at Mr. Fine's
9 apartment on March 6th, 1972?

10 A I believe it was around 7:00.

11 Q It was dark?

12 A Yes.

13 Q Now prior to your going to Mr. Fine's
14 apartment, or during the course of the drive over, did
15 you ask Detective Radtke why Mr. Kornberg and Mr.
16 Faulkner were accompanying you?

17 A Mr. Faulkner was the complainant according
18 to Radtke; he said he lived there with Mr. Fine.

19 Q According to Radtke, Faulkner lived with
20 Fine at the apartment; is that correct?

21 A Right.

22 Q Did you know at that time that Faulkner
23 had been arrested the day before?

24 A Yes.

25 Q Did you see any of the arrest records

1
2 regarding Faulkner's arrest?

3 A No.

4 Q At that time you hadn't?

5 A No.

6 Q Did Faulkner tell you at that time that
7 he lived at the apartment?

8 A No.

9 Q Did you ask Detective Radtke why Mr.
10 Kornberg was going along?

11 A From what I learned from Detective Radtke?

12 Q This is prior to entering the apartment,
13 I am talking about.

14 A Yes.

15 Q Go ahead.

16 A Mr. Kornberg was the attorney representing
17 Mr. Faulkner who apparently was arrested before.

18 Q Now you had been a police officer for
19 some ten years; is that correct?

20 A Yes.

21 Q Had you ever gone with the complainant
22 and a complainant's attorney to the home of an alleged
23 defendant prior to this time?

24 A I had gone with complainants.

25 Q I said "and attorneys," not just complainants.

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A No, not attorneys.

Q Now the purpose of your going to the apartment was to arrest Mr. Fine; is that correct?

A Yes.

Q Detective Radtke specifically said that that was why you were going to the apartment to arrest Mr. Fine?

A Yes.

Q And you brought Mr. Faulkner and Mr. Kornberg along to arrest Mr. Fine; is that correct?

MR. VURCHILL: I object to the word that he brought them along.

MR. WYNN: Withdrawn.

Q Mr. Faulkner and Mr. Kornberg accompanied you and Detective Radtke to arrest Mr. Fine; is that correct?

A Yes.

Q Tell us exactly what happened when you arrived at the apartment house 132-48 41st Road in Flushing.

A We went inside, and as I recall, the apartment was on the first floor. Initially, I thought we went directly to the apartment. I know now we went to the superintendent.

1

2

Q You went to the superintendent?

3

A No, Detective Radtke.

4

Q Were you with him?

5

A I don't recall that.

6

Q What happened after Detective Radtke

7

went to the superintendent's apartment?

8

A We went up to the second floor.

9

Q When you say "we," please be specific.

10

A Detective Radtke, myself, Mr. Faulkner --

11

there was a conversation concerning the dogs.

12

Q One second; where was Mr. Kornberg at

13

the time, if you know?

14

A Somewhere behind us.

15

Q You can't say specifically where?

16

A No.

17

Q Where was the super at the time, if you

18

know?

19

A I don't recall him at all.

20

Q Okay.

21

You had a conversation on the second floor.

22

Would you relate that conversation to us, please?

23

A It concerned whether or not Fine was in

24

the apartment. As I recall it, if the dogs were barking

25

the apartment is empty.

1

2

Q Who said that, if you recall?

3

A Either Radtke or the boy.

4

Q Go ahead.

5

A The dogs were listening.

6

Q You went to the door of the apartment?

7

A We went to the door of the apartment.

8

Q Who went to the door of the apartment?

9

A Myself and Detective Radtke.

10

Q Where was Mr. Kornberg, did you see him?

11

A I wasn't concerned with Mr. Kornberg.

12

Q Where was Mr. Faulkner?

13

A Near the door.

14

Q Okay.

15

A We could hear the dogs. I could hear the

16

dogs sniffing at the front door.

17

Detective Radtke then went with the boy
after finding out that he could control the dogs.

19

Q Let's be more specific. Were you present

20

when Detective Radtke had a conversation about the dogs
with the boy?

21

A He asked him, can you control them.

23

Q What did the boy say?

24

A As I recall, he says they will do what

25

I tell them or I can control them, or words to that

effect that he could keep the dogs under control.

They were supposed to be two large German Shepherds.

Q Okay, what happened?

A Detective Radtke and the boy went down the stairs.

Q Yes.

A I stayed by the front door.

Q Yes.

A A couple of minutes later, the front door opened.

Q Before we get to that point, prior to the time that Detective Radtke and Mr Faulkner went downstairs, did you knock on the door?

A No.

Q Did you attempt to open the door?

A No.

Q So you don't know whether the door was locked or not; is that right, that is your testimony, nobody ever tried to open the door?

A No.

Q Nobody tried to open the door?

A As I recall, no.

Q Nobody had a key?

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1
2 A No.

3 Q Wasn't the purpose of going to the super's
4 office to get a key, if you know?

5 MR. VURCHILL: I object to that as
6 argumentative.

7 THE WITNESS: I can't recall going to
8 the super's office.

9 Q So it is your testimony, just so I am
10 clear that before Mr. Faulkner and Detective Radtke
11 went downstairs, nobody ascertained if that door was
12 opened or locked; that is your testimony?

13 MR. VURCHILL: I suggest you rephrase
14 the question as to what he did.

15 MR. WYNN: No.

16 Q Is it your testimony that before Detective
17 Radtke and Mr. Faulkner went downstairs, that nobody
18 in your presence tried to ascertain whether the door
19 was opened or locked? I should say locked or unlocked,
20 so we will be very specific.

21 It was closed, wasn't it?

22 A The door was closed and I cannot say --
23 I don't believe anyone tried the door.

24 Q Do you recall testifying before Mr.
25 Justice Brennan in a suppression hearing on November 29,

1972?

A I was in the court, yes.

Q Do you recall being questioned by Assistant District Attorney Piacentini, and being asked on page 188 the following question, and giving the following response, I should say the following questions and responses:

"Q What happened at that time?

"A At this point, Detective Radtke and the boy went outside.

"Q Do you know where they went?

"A Now I know they went to the rear fire escape with an idea to gain entry through the window.

"I stayed by the door.

"Q Was the door locked to the apartment?

"A Yes."

Q Do you recall being asked those questions and giving those responses?

A I recall the questions and responses. I can't pull out of my own mind whether I said the exact answers or not.

Q I ask you again, prior to the time that David Faulkner and Radtke went downstairs, was the door

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to Mr. Fine's apartment locked or unlocked?

MR. VURCHILL: If you know.

THE WITNESS: Well, it was closed. I
believed it to be locked.

Q You said there came a time when the door
was opened?

A Yes.

Q From the inside, I take it?

A From the inside.

Q Where were you when the door was opened?

A On the outside.

Q Who if anyone was with you at that time?

A No one.

Q You were alone?

A Right.

Q What happened when the door was opened
from the inside?

A David Faulkner appeared.

Q What if anything was he doing?

A He was holding the dogs.

Q How much time had elapsed from the time
that Mr. Faulkner and Detective Radtke went downstairs
until the time the door was opened from the inside by
Mr. Faulkner, if you can recall?

1

2

A A short time, a couple of minutes.

3

4

Q What happened when Mr. Faulkner opened the door holding the dogs?

5

A He said, I got them, and he is not here.

6

7

Q By "He is not here," to whom was Mr. Faulkner referring to?

8

9

A It was words to that effect. At that point, I assumed Mr. Fine.

10

Q What did you do next?

11

12

A I entered the apartment immediately to check.

13

Q Who was in the apartment?

14

A No one.

15

Q No one?

16

A No one.

17

18

Q How long did it take you to ascertain that there was no one in the apartment?

19

A About five minutes.

20

21

Q Who else entered the apartment with you at that time?

22

23

A Detective Radtke, the boy, David Faulkner, and Mr. Kornberg.

24

25

Q No doubt about the fact that Mr. Kornberg, Mr. Faulkner, yourself and Detective Radtke entered

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83a

1
2 that apartment on March 6th, 1972?

3 A None.

4 Q Did you have a search warrant at that
5 time?

6 A I didn't, no.

7 Q Did Detective Radtke have a search warrant
8 at that time?

9 MR. VURCHILL: Do you know?

10 THE WITNESS: He had none, no.

11 Q Did you have an arrest warrant at that
12 time?

13 A No.

14 Q Did Detective Radtke have an arrest warrant
15 at that time?

16 A No.

17 Q So you searched the apartment for five
18 minutes and determined that Mr. Fine was not there; is
19 that correct?

20 A That's correct.

21 Q Did you and the others then leave the
22 apartment?

23 A No.

24 Q What did you do then?

25 A Detective Radtke found some photographs

1
2 in the bedroom.

3 Q What happened then?

4 A I checked, there were bullets found in
5 a closet, and I believe an empty holster.

6 Q What else?

7 A Gambling records or notations in a note-
8 book and some cassettes or tapes -- I think they were
9 cassettes with statements pertaining to gambling.

10 Q What else was found in the apartment?

11 A Nothing else.

12 Q How long did you four remain in that
13 apartment after the five minutes in which it took you
14 to determine that Mr. Fine wasn't present?

15 A I think it was around an hour.

16 Q It was at least an hour, wasn't it,
17 Detective Sassaman?

18 A Well, I would say an hour. I know it
19 was not a short period of time. I wasn't keeping a
20 minute-by-minute account of the passage of the time.

21 Q I refer you again to the suppression
22 hearing, this time page 208.

23 Do you recall the following questions,
24 this time by me, and giving the following responses:

25 "Q And you told Mr. Piacentini that

1
2 you walked in just to make sure that Mr. Fine
3 wasn't present; isn't that correct?

4 "A Yes.

5 "Q How long did it take you to make
6 sure that Mr. Fine wasn't there?

7 "A No more than five minutes.

8 "Q And how long after you determined
9 that Mr. Fine wasn't there did you and your
10 brother officer remain in the apartment?

11 "A We were there for a while.

12 "Q Like for an hour or two hours?

13 "A Yes, it was -- I can't give you
14 a definite time. It was a long period of time.

15 "Q You were there for a long period
16 of time after you determined that Mr. Fine
17 wasn't there?

18 "A Yes."

19 BY MR. WYNN:

20 Q Do you remember being asked those questions
21 and giving those answers?

22 A Yes.

23 Q And those answers accurately reflect your
24 recollection as of today of what happened on March 8,
25 or what day, March 6, 1972?

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2 MR. VURCHILL: Can we have that read
3 back, please?

4 (The pending question was read back by
5 the Reporter.)

6 MR. VURCHILL: What's the question, now?

7 BY MR. WYNN:

8 Q Do those questions and responses that you
9 gave to me on cross-examination on November 29, 1972 --
10 would you like to change --

11 I withdraw the previous question.

12 Would you like to change them in any way,
13 those responses that you gave to those questions?

14 A I don't think so, no.

15 Q Now you said you took bullets and gambling
16 paraphernalia and photographs from Mr. Fine's apartment
17 on March 6, 1972?

18 A That was taken as evidence.

19 Q What else, if anything, was taken from
20 Mr. Fine's apartment on that night by you, your brother
21 officer, Mr. Kornberg, or Mr. Faulkner?

22 A There was a quantity of various items,
23 valuables, not evidence.

24 Q Such as?

25 A The only thing that comes to mind is a

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silver service.

Q You took a silver service?

A Yes, but there were several other items which were vouchered.

I can't give you an exact rundown of the things.

Q Did you take any United States currency; i.e. bills, green bills, not coins, bills?

A I am not positive. I think there was some.

Q Did you take any, Detective Sassaman?

A Did I, personally?

Q Did you personally take any money out of Mr. Fine's apartment that night, any bills, dollar bills, be they ones, fives, tens, anything?

A Whatever was taken out of there at that point was vouchered.

Q I didn't ask you that.

I asked you whether you personally took any dollar bills, by dollar bills, I mean U. S. currency in bill form, out of Mr. Fine's apartment in that night in question.

I didn't ask you if you vouchered it.

A I did not.

Q Did you see Detective Radtke take any

1
2 U. S. currency in bill form out of that apartment in
3 the night in question?

4 A He took some items. I am trying to recall
5 if they were in bill form or not.

6 I can't say specifically to my knowledge
7 the things which were taken and there was a certain
8 amount of money which was taken to the precinct and
9 vouchered.

10 Q Who vouchered it at the precinct?

11 A By Detective Radtke.

12 Q Were you present?

13 A Not at all times.

14 Q Did you see the vouchers that Detective
15 Radtke prepared?

16 A Some of them subsequently, yes.

17 Q How many vouchers did he prepare, if you
18 know?

19 A There were separate vouchers prepared
20 for the evidence and vouchers prepared for the items
21 which were safeguarded.

22 Q Did you sign any of those vouchers?

23 A I don't believe so, no.

24 Q Do you know where they are?

25 A The vouchers should be on file in the

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1
2 Police Department Property Clerk.

3 MR. WYNN: If you could possibly produce
4 them, I would ask you to do so.

5 Q Now, did you see Mr. Kornberg take any-
6 thing out of Mr. Fine's apartment on the night in
7 question?

8 A Not to my knowledge.

9 Q Did you see Mr. Faulkner take anything --
10 take anything out of Mr. Fine's apartment on the night
11 in question?

12 A Not to my knowledge, no.

13 Q Did Detective Radtke at anytime tell you
14 that he had taken money out of Mr. Fine's apartment
15 at anytime?

16 A There was -- well, let's see. In response
17 to that question, no.

18 Q I am not talking about a roll of quarters.
19 am talking about dollar bills.

20 A No.

21 Q Detective Radtke never told you anything
22 about taking any U. S. currency in bill form out of
23 Mr. Fine's at anytime?

24 A No.

25 Q Was any furniture taken out of Mr. Fine's

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2 apartment on the night in question, March 6, 1972, by
3 any of you to be vouchered or for safekeeping?

4 A Not furniture, no.

5 Q Television sets?

6 A That I'm -- if you say furniture, I
7 would say no.

8 Q How about T. V.?

9 A If you say T. V., I can't recall now
10 out of my own mind.

11 Those items which were carried out were
12 taken and they were vouchered and I know there was a
13 list of items.

14 Q All of the items that you carried out
15 you placed back in the car; is that correct?

16 A That's correct.

17 Q You didn't call for a truck or anything
18 to assist you to take you to the station house?

19 A Those items were fitted within the trunk
20 and rear seat of the sedan.

21 Q What kind of car?

22 A A four-door sedan.

23 Q What kind of car was it?

24 A I think it was a Plymouth.

25 Q It was a Police Department car?

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A Yes.

3

Q You say you took things out to be vouchered

4

for evidence and some for safekeeping?

5

A Correct.

6

Q Did you take everything of value out of

7

that apartment, did you leave anything of value in that
apartment?

8

9

A Not as far as -- these items were visible

10

and appeared to have value.

11

Q You took everything that was visible and

12

appeared to have value?

13

A Yes.

14

Q Now there was silverware that you took

15

out; where was that?

16

A That was in a closet.

17

Q So it wasn't only visible to the naked

18

eye, it was visible after you and Detective Radtke

19

searched the apartment?

20

A Yes.

21

Q You opened all the drawers and closets

22

and everything?

23

A Well, I opened some things, I can't say

24

that I opened every drawer or every -- you know, little

25

cabinet. But I did open every closet door myself when

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I initially ran in.

Q Between yourself and Detective Radtke, prior to leaving that apartment, you had opened all the closet door that you and he could see; is that correct?

A Yes.

Q And you had taken everything of value that you and he could find; is that correct, as well as certain things for evidence?

A To my knowledge, yes.

Q Did you take any jewelry?

A I can't give you a definite answer on that without referring to the list of the Property Clerk items which were carried out.

It has been sometime and although this has been gone over --

Q Well, let me ask you another question.

In all the years that you have been on the Police Force, did you ever go to anyone's apartment without a search warrant or an arrest warrant and take everything of value that you could find in the apartment out of that apartment and voucher it?

A I have taken things for safekeeping when they could not be secured.

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Q I said everything of value.

A That is rather difficult to answer. I can only answer it by saying in certain circumstances I have taken things of value.

You are using the word "everything."

Q That is the word that you used.

A This, to me, were those items which were immediately visible.

Q Wait a minute, you just said you went into a closet to get out some silverware?

A Yes.

Q That wasn't immediately visible unless you opened the closet door.

A When I opened the closet door, then it was immediately visible.

Q And if you opened a drawer and it had 20,000 pesos, it would be immediately visible?

A Yes.

Q And if you opened a drawer that had jewelry in it, it would have been immediately visible?

A Yes.

Q And if there was money, U. S. currency in bill form, it would be immediately visible if it was in a closet and you opened a closet?

1

2

A Yes.

3

4

Q And if you saw a television set or
phonograph you could see that too?

5

A Yes.

6

7

8

Q Now, I ask you, in all your years in
the Police Department if you ever did all this without
a search warrant or arrest warrant, and if so, when.

9

10

11

A I would say that I have taken things. I
may not have taken, or I may have taken things which I
would consider everything of value at a certain time.

12

13

If you are asking for a specific time,
that, I can't tell you.

14

15

16

Q I am asking you specifically, without a
search warrant or arrest warrant, which is the case here; is
that correct?

17

18

19

20

A That's correct.

21

22

23

24

25

Q Can you name one other time in all the
years that you have been on the Police Department when
something like this occurred?

A I would say, no, nothing like this oc-
curred in my entire twelve years.

Q Prior to March 6, 1972, had you ever been
in Mr. Fine's apartment, March 6?

A March 6?

1
2 Q That was the time you went in for the
3 first time?

4 A No.

5 Q Prior to March 6, 1972, had Detective
6 Radtke ever been in Mr. Fine's apartment, to your
7 knowledge?

8 A To my knowledge, I don't know.

9 Q Now, just so the record is clear, do you
10 know how Mr. Faulkner gained entrance to Mr. Fine's
11 apartment on March 6, 1972 before he opened the door?

12 A Via a window.

13 Q Did he open the window or did he break
14 the window?

15 A I believe he broke the window.

16 Q Do you know if anyone instructed him to
17 break that window?

18 A I can't say specifically if someone said
19 to him, "Break that window."

20 Q And this apartment that Mr. Faulkner went
21 into on the night in question, that was the apartment
22 where he allegedly lived with Mr. Fine; is that correct?

23 A Yes.

24 Q Did you ask him when he last resided with
25 Mr. Fine in that apartment?

1
2 A I asked him nothing.

3 Q Did you know on March 6, 1972 whether
4 any police officers of the City of New York had been
5 in Mr. Fine's apartment on March 5, 1972?

6 A In the course of the evening it was made
7 apparent to me that other people had been in there.

8 Q How was it made apparent to you, Detective?

9 A In the course of conversations with De-
10 tective Radtke and Mr. Faulkner.

11 This was not a specific question and
12 answer which I had with Mr. Faulkner. Detective Radtke
13 would make a statement while we were looking through the
14 apartment that they really left a mess in here, you know,
15 what did these guys do, what was going on here.

16 MR. VURCHILL: Is this in the apartment?

17 THE WITNESS: In the apartment.

18 The condition of the apartment, if I could
19 mention that?

20 Q Please do.

21 A (Continuing) -- was, I would call it, a
22 shambles. There were two dogs, as I said, which were
23 there. To me it appeared as if they had the run of the
24 living room and that is where they went, they lived in
25 the living room, they shit in the living room, and they

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pissed in the living room.

The floor was almost a sea of dog droppings. I would call the condition of the place very bad, dirty, unkept.

In addition to this, it was also disrupted.

Q As if someone had been there on a prior occasion?

A I would say yes to that because of what I have subsequently learned.

Q As if someone had searched the apartment on a prior occasion?

A I would agree to that because of what I subsequently learned.

Q Did you subsequently learn that at least four police officers and Mr. Faulkner had been in the apartment on March 5, 1972?

A Yes.

Q What are the names of those four police officers, if you know?

A I don't.

Q If I told you their names were, Patrolman Stanley, Patrolman Dwyer, Patrolman Fischer, and Sergeant Murray, would that refresh your recollection?

MR. VURCHILL: He didn't say he didn't

1
2 remember. He said he didn't know.

3 THE WITNESS: I have no independent
4 knowledge as to who was in the apartment, names
5 of people.

6 My knowledge was based on what transpired
7 that night.

8 BY MR. WYNN:

9 Q Now after you had searched the apartment
10 and took the items on March 6, 1972, where did you go?

11 A To the 109th Precinct Station House.

12 Q All four of you together?

13 A I believe, yes, we went together.

14 Q Did you have any further conversations
15 with Mr. Kornberg and Mr. Faulkner regarding the search
16 of the apartment?

17 A Not that I can recall, no.

18 Q Did they remain in the precinct when you
19 returned or did they leave?

20 A I believe in the course of the vouchering
21 I returned Mr. Kornberg and Mr. Faulkner to the 113th
22 Precinct where our offices were, where their vehicles
23 were, and then returned to pick up Detective Radtke.

24 Q Did you voucher everything that you took
25 out of that apartment?

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2

A Everything that was taken out was there.

3

Q Was vouchered?

4

A Was vouchered.

5

Q Did you return to Mr. Fine's apartment

6

after March 6, 1972?

7

A Yes.

8

Q When did you return to Mr. Fine's apartment

9

after March 6, 1972?

10

A The following day.

11

Q What time on the following day did you

12

return to Mr. Fine's apartment?

13

A I believe it was in the afternoon.

14

Q Was it light out?

15

A Late afternoon.

16

Q Was it light or dark?

17

A As I recall it was light.

18

Q How did you gain entrance to Mr. Fine's

19

apartment on March 7, 1972?

20

A I went to the super.

21

Q What happened?

22

A I asked him if he had a key to Mr. Fine's

23

apartment, that I wanted to check to see if he was

24

there.

25

Q Did you identify yourself as a police

1

2

office.?

3

A Yes, I did.

4

Q Were you alone?

5

A I was alone.

6

Q What did the super say?

7

A He said he didn't have a key.

8

9

I went up to the apartment and tried the door. It was open, it wasn't locked.

10

Q You went up and tried the door or the

11

super went up?

12

A I went up.

13

Q Alone?

14

A With the super.

15

Q And you turned the handle of the door and

16

it opened?

17

A Yes, it was unlocked.

18

Q What happened then.

19

A I went inside, he came inside, went into

20

the bedroom, dropped a roll of quarters in a bureau top drawer, came out and left.

21

Q You dropped a roll of quarters?

22

A Yes.

23

Q Where did you get that roll of quarters?

24

A The previous evening having completed the

25

1
2 vouchering of the items at the 109th Precinct. Radtke
3 and myself returned to our offices. There was papers
4 and folders which we had left in the trunk. I brought
5 them upstairs and among them was a small box of coins,
6 quarters or half dollars.

7 Q American coins?

8 A Yes.

9 Q No question about that?

10 A As far as I can recall, they were American
11 coins.

12 I asked him -- I came up to him --

13 Q By "him" you mean Detective Radtke?

14 A Radtke.

15 I said this was in the trunk and he looked
16 at me and he said to me, "We must have forgotten it,"
17 in that exact tone of voice.

18 Q Would you describe his facial expression,
19 if any, when he said that?

20 A Like, "Gee, this looks like a goodie for
21 me."

22 I tried to use the exact tone, and he
23 said, "Oh, we must have forgotten it."

24 Q As if he was being facetious?

25 A Yes, I may not be conveying the precise

1
2 tone but this was exactly the words he used.

3 Q Was he crying when he said that?

4 A No.

5 Q What was he doing?

6 A Smiling broadly.

7 Q What did you do then?

8 A I was somewhat distressed. This sort of
9 related, if I could interject this, back to one of your
10 previous questions about the people who had entered the
11 apartment prior to our being there.

12 At that point, when it became evident
13 that other people had been in there, the patrolman or
14 whoever it was from the night before, I felt that these
15 pieces and valuable items should have been vouchered.
16 That it might reflect on us if we left anything there
17 and recalling particular circumstances, this, I felt,
18 you know, it bothered me.

19 It did not seem to bother Detective Radtke.

20 When he said those words, it gave me a
21 rather churning sensation and I really did not want to
22 have anything to do with this guy.

23 Q "With this guy," meaning Detective Radtke?

24 A Radtke. He sort of passed the quarters
25 off and said, well, keep them; not exactly those

Sassaman

40

1
2 words but words to that effect.

3 I left work and I went back to my apartment.

4 During the following day, I came to the
5 conclusion that I didn't want to have anything to do
6 with anything like this. The easiest thing was to just
7 drop them somewhere. I didn't want to profit from this.

8 My own feeling was that this guy was a
9 miserable bastard who lived in a shit house and he was
10 doing all kinds of wild things from those particular
11 things -- but, it still rubbed me the wrong way.

12 I really didn't want to profit from this
13 because I figured it could happen to me.

14 So, I said, well, what can you do. I
15 didn't want to take it back and voucher it because now
16 I am coming in with something late and I felt it should
17 go back to where it was and I believe it came from the
18 top drawer, since, as I recall, this was the location
19 where there were coins and things up there.

20 I thought this was the thing I should do.
21 Rightly or wrongly, this was my decision, my feeling,
22 and I felt, well, to justify myself, I could see if the
23 fellow is there. There is an active alarm for him, if
24 he is there, I can arrest him. If he is not there, I
25 accomplish what I wanted to do.

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2 I got the super, went in, he took one
3 look at the place and was speechless. All I could
4 remember him saying is, "I got to clean this up," and
5 I left.

6 Q How long were you in the apartment?

7 A Less than a minute.

8 Q Did you ever return to the apartment again?

9 A Never.

10 Q Did you take anything on the night of
11 March 7, 1972?

12 A I took nothing out of the apartment. I
13 never returned. I walked out of that door feeling the
14 very, very marvelous feeling I had accomplished some-
15 thing. I was so happy and I really felt great.

16 Q Did you have any further discussions re-
17 garding Mr. Fine with Detective Radtke after he returned
18 the quarters, anytime after March 7?

19 A During the course of the summer, there
20 were several conversations in chronological order --

21 Q Yes, please.

22 A (Continuing) Detective Radtke was very
23 upset that an arrest, as I found out later that day,
24 an arrest was made of Mr. Fine by a patrolman in the
25 precinct.

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Q Did you later learn that that patrolman's name was Patrolman Saladino?

A Yes.

Q Did Detective Radtke tell you why he was upset?

A He had put a lot of work into the case, he wanted the arrest. This was the general initial feeling I got.

Several days after that, Detective Radtke arrested Mr. Fine again.

Q For what, if anything?

A Himself. I think it was for the gambling records. He was very voluble in his condemnation of the precinct for making this particular arrest. He wanted the credit for himself.

Q Was Mr. Fine a known criminal?

A Not as far as I know.

Q Had Mr. Fine ever been arrested previous to March 7, 1972?

A I know now he wasn't, as far as my knowledge of the case goes --

Q Yet Detective Radtke was very upset that he, Detective Radtke, had not made this particular arrest of Mr. Fine?

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A Yes. Later in the month of April, he asked me about procedures for getting the property out, and I said what procedures. He says, this guy is trying to get his car back, and I said to him, what did you have to do, you didn't arrest him and take his car away. I said send him to the guy who did it, and he said, well, I started this -- well, words to the effect of that is bullshit, I will take care of this, or something like that, and he prepared a letter.

I drove him to the Property Clerk yard in Whitestone. He went in, I don't know exactly what transpired now -- at the time I didn't know -- now I know he took a letter requesting release of the car to Mr. Fine or Mr. Fine's attorney. I am not sure.

Q By "Mr. Fine's attorney," whom do you mean?

A I think it was Mr. Klein.

Q Is that the gentleman seated at your left, if you know?

A I know him now. I don't believe I knew him then.

Q Okay.

A That was the end of it.

During the course of the summer mention

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1
2 would be made from time to time. He would come in and
3 say so that Fine case, it's a pain in the ass, or,
4 they are making allegations at this place, and then
5 when Mr. Klein was arrested with Mr. Archer, he seemed
6 very, like, wild, this is a wild thing.

7 Q He was upset?

8 A Somewhat. But he vocally would always
9 say, "Oh, Jesus, I don't want to get in trouble with
10 this. These guys might try to put me in the middle."

11 My impression was that he was saying this
12 for my benefit. He didn't have to say anything to me.

13 One point during the summer, he mentioned
14 that in court somebody made an allegation in front of
15 the judge that there was something like \$10,000 either
16 bribe or request that was passed from somewhere.

17 I said what are you worried about. I
18 said did you get any bribe, and he said oh, no, just
19 like that.

20 Q In the same facetious manner that he
21 talked about with the quarters?

22 A Somewhat differently but in that vein.
23 He would be a little upset on the days when the in-
24 dictment was thrown out or the case was thrown out.

25 This case went into the Grand Jury and

1
2 out of the Grand Jury and into the Criminal Court and
3 out of the Criminal Court, and I got kind of tired of
4 him going back and forth telling me these things like,
5 "Oh, it's terrible."

6 In September, there was a conversation
7 between myself --

8 MR. VURCHILL: What year, '72?

9 MR. WYNN: '72.

10 THE WITNESS: '72 -- no, actually in
11 response to the question, at that point -- no,
12 that wasn't a conversation with him.

13 I would have to stop, then, at October
14 or September of '72.

15 Q Why do you have to stop?

16 A That was the conversations pertaining to
17 the case that summer.

18 Q Did you then have subsequent conversations
19 with him after the summer of '72?

20 A Yes.

21 Q Would you tell us about when they occurred
22 and what was said?

23 A Let's see. I was called into the District
24 Attorney's office in Queens, I believe, the last Friday
25 of September.

1
2 Q '72?

3 A '72, yes.

4 Mr. Gaudelli's office. He was well known
5 to me and I had several cases within his particular area.

6 I assumed this was pertaining to one of
7 the cases being prepared for trial. He then asked me
8 certain questions.

9 Q What did he ask you?

10 A Well, I walked in, I sat down and smiled
11 at him, and said, "Not guilty, I would like a lawyer,"
12 and he looked at me and he smiled and says let's not
13 talk about that and then he started in advising me that
14 I could be arrested for burglary and bribery and he
15 ran through the list of things and he wanted to know
16 what do I know about the Fine case and I said nothing
17 and he said what were you doing there on that particular
18 point, I said the day I was there alone I went to take
19 back some coins and I says I was there with the super.

20 I was subsequently interviewed by the
21 officers from Internal Affairs at his office and subse-
22 quently by the Special Investigator from -- the Special
23 Prosecutor from Mr. Nadjari's office and they asked me
24 about conversations with Detective Radtke and I told
25 them exactly the same things I had known, that he never

1
2 verbally said to me he had received anything and during
3 the remainder of the winter, he never verbally said
4 I got money from anyone.

5 Subsequently, in the early part of February,
6 I had a conversation with him.

7 Q This is February '73?

8 A February of '73. I was on a plant,
9 wire tapping on one of the Black Liberation Army plants,
10 and in the middle of the night I called the Homicide
11 office for relief for a meal and he arrived.

12 I did not ask for him specifically. I
13 asked for anybody in the office and he showed up. This
14 was after we had been interviewed by Mr. Nadjari's
15 office.

16 He had been very upset. He is going
17 through a lot of aggravation.

18 Q "He" being Radtke?

19 A He appeared nervous to me. He said what
20 am I going to do with this. I said listen, if you ever
21 took anything you know if you took anything. If you
22 ever got any money from anybody and they were wired,
23 think of it. And he said well, or words to that effect,
24 and then he just rubbed his fingers like this (Indicating)
25 and then I looked at him and shrugged my shoulders.

1
2 Q When he rubbed his fingers, what did you
3 take that motion to mean?

4 A He had received some money. This was,
5 you might say, a common gesture in -- to me, when you
6 say something like this, you say you got some money.

7 I said to him well, if you ever got
8 anything and someone was wired -- I have to back up.

9 There was another comment prior to this
10 that he had visited Mr. Klein's office to get gambling
11 information and I said what are you doing that for,
12 and he said I made a record, it is perfectly legitimate,
13 and I like shrugged my shoulders, you know, like stay
14 away from this shit, it is a weird case.

15 But he said I made a record, I made a
16 record, so I just went like don't bother me, and that
17 one gesture was the only time that he indicated to me
18 he ever received anything.

19 He did not say from whom, he never would
20 say anything.

21 I know several times he was worried about
22 people being wired. He expressed this verbally and
23 sometimes he would -- if you have ever stood in front
24 of somebody and talked to them and see their eyes going
25 all over you and looking for the microphone, it is

1
2 really a fascinating experience. You know, they are
3 looking -- like he wanted to check your coat. This
4 was his demeanor at different times.

5 From that point, I had no further con-
6 versations with him. I was transferred to Manhattan
7 and -- no -- I take it back. I didn't run into him.

8 When I was initially called down I requested
9 to be shifted to a different group. I did not want to
10 work with him, when I became aware of the whole particular
11 incident. So I did not work with him except, like we
12 would be grouped one day out of four or five that we
13 would be working instead of four days together.

14 Shortly after that particular incident,
15 I was called down to Nadjari's office again, and that
16 day when I went down there I said what is it, and he
17 said you haven't heard, and he says Rantke is dead, and
18 we were advised that he had died.

19 Subsequent to that I was advised that he
20 had committed suicide and that he had died of carbon
21 monoxide poisoning, and as far as our office knew, he
22 had died of a heart attack and he was very overweight
23 but I was told the autopsy said he died of carbon
24 monoxide poisoning, and beyond that no one ever called me.

25 Q Now did you ever discuss the fine matter

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1
2 with Patrolman Saladino?

3 A Not any conversation other than perhaps
4 meeting in the court on a day we were there for a
5 hearing or as today when we meet to come down to this
6 office. No extended conversation because I had no
7 connection with his part of the arrest, but I would
8 see him and he would comment that he is being accused
9 of an allegation or something like that but no conver-
10 sation other than passing in court.

11 Q Did you ever have any conversations re-
12 garding the Fine matter with Mr. Kornberg?

13 A No, Mr. Kornberg never came near me.

14 Q Did you ever have any conversations re-
15 garding the Fine matter with Mr. Klein?

16 A No.

17 Q Did you have any conversations regarding
18 the Fine matter with David Faulkner other than the time
19 you went to Mr. Fine's apartment?

20 A No.

21 Q Did you ever have any other conversations
22 with the District Attorney's Office of Queens County
23 regarding the Fine matter?

24 A No.

25 Q Did you testify before the Grand Jury, any

Grand Jury regarding the Fine matter?

A Yes.

Q What Grand Jury did you testify before?

A A Special Prosecutor's Grand Jury in Queens, Mr. Nadjari's Grand Jury. And this was sometime in, I believe, March of 1973. I am not positive, but sometime after Detective Radtke had died, very shortly thereafter, I was called in to testify there.

Q Now you said you will try to get us the vouchers that you testified about, at least copies of those vouchers?

MR. VURCHILL: Those are Radtke's vouchers.

MR. WYNN: That is the vouchers taken at the time that Detective Sassaman and Radtke were there. If those vouchers are produced, if there are any questions, I would like to ask those questions.

MR. VURCHILL: Off the record.

(Discussion off the record.)

MR. WYNN: Let's turn for a moment to March 6, 1972, when you and Mr. Faulkner and Kornberg and Detective Radtke were in Mr. Fine's apartment.

Q You stated that the four of you were in

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1
2 there for at least an hour?

3 A Yes.

4 Q What was Mr. Kornberg doing during that
5 hour, if you know?

6 A As far as I know, he was standing there.

7 Q Did he pick up anything?

8 A I couldn't say.

9 Q Did you show any evidence to Mr. Kornberg
10 at that time?

11 MR. VURCHILL: Do you mean did he spe-
12 cifically exhibit something to him, or did
13 Kornberg see what he had in his hands?

14 Q Did you specifically discuss any of the
15 material that was later vouchered as evidence with Mr.
16 Kornberg at that time?

17 A Myself, I think I may have asked Faulkner
18 something about the bullets and the gun holster. The
19 bullets were found in one closet and the holster was
20 in there also, I believe, and I asked Faulkner where
21 the other gun was. He had indicated that there was
22 another gun other than the one that he had had.

23 Q You never found another gun, did you?

24 A And he indicated not the closet where
25 the bullets and holster was, but a space above the

1
2 kitchen sink somewhere which there was nothing there.

3 Q You never found another gun on the premises?

4 A No, and at that point I had the holster
5 and bullets and I don't believe I specifically said to
6 Mr. Kornberg this is -- look what we have here, I was
7 directing my inquiry I think to Mr. Faulkner to ask him
8 did it match this or something. I was concerned with
9 finding this other gun.

10 Q Now certain pictures were seized as
11 evidence, were they not?

12 A Yes.

13 Q Did you seize any of those pictures?

14 A No.

15 Q Do you know who did seize those pictures?

16 A Detective Radtke.

17 Q Did you see from where Detective Radtke
18 seized those pictures?

19 A I believe they were on the bureau. As
20 I recall, I think they were on the bureau.

21 Q They were outside on the bureau on the
22 top of the bureau?

23 A Some but not all. Some were on the bureau,
24 some were in the drawer.

25 Q They were in different places; is that

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1
2 correct?

3 A I think the top drawer, I am not -- I
4 can't be positive.

5 Q Did you discuss those pictures with
6 Detective Radtke during the time that you were in the
7 apartment?

8 A Other than him thinking that this was a
9 fantastic -- look, evidence, this proves -- we can
10 prove the whole thing. This is the gist of it.

11 Q Do you remember any specific pictures
12 taken?

13 A The Coke bottle picture.

14 Q Do you remember any picture that had Mr.
15 Faulkner holding a gun to his head?

16 MR. VURCHILL: Mr. Faulkner holding a
17 gun to his own head?

18 Q A picture of Mr. Faulkner holding a gun
19 to his head.

20 MR. VURCHILL: His own head?

21 Q His own head.

22 A That rings a bell. I can't say that I
23 saw the picture or something that was mentioned at a
24 prior time.

25 Q Did you have any discussions with Mr.

1
2 Kornberg regarding the photographs that were seized
3 as evidence?

4 A Not that I know.

5 Q When you left the apartment on March 6,
6 1972, how did you leave?

7 A The front door.

8 Q Did you lock the front door?

9 A It was a push-button thing.

10 Q Did you lock the push button before you
11 left?

12 A As far as I know, yes.

13 MR. WYNN: I have no further questions.

14 MR. KLEIN: I have no questions.

15 MR. VURCHILL: I have no questions.

16 MS. RESNICOFF: I have no questions.

17 MR. WYNN: One last question.

18 BY MR. WYNN:

19 Q When Mr. Faulkner was in the apartment
20 with you on March 6, 1972, was his arm in a sling, if
21 you recall?

22 A Offhand, I couldn't tell you.

23 Q Did you make any notes or any memoranda
24 of your activity in Mr. Fine's apartment on March 6 or
25 7, 1972?

1
2 A No, I think the only notation made on
3 that was I may have assisted in arrest. It was maybe
4 a one-line entry which was all that I had on that.

5 MR. WYNN: I would appreciate it if you
6 would check your notes to see if you made any
7 entries at all.

8 A Subsequent -- I made nothing other than
9 the DD5's when I appeared in court testifying after
10 Radtke's death.

11 MR. WYNN: Thank you.

12 (Time noted: 4:20 P. M.)

13
14 _____
15 MICHAEL SASSAMAN

16 Subscribed and sworn to before me
17 this day of , 1974.

18
19 _____
20 Notary Public
21
22
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25

C E R T I F I C A T E

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

I, DANIEL FOX, a Shorthand Reporter
and Notary Public of the State of New York,
do hereby certify:

That MICHAEL SASSAMAN, the witness
whose deposition is hereinbefore set forth,
was duly sworn by me, and that such deposition
is a true record of the testimony given by
such witness.

I further certify that I am not related
to any of the parties to this action by blood
or marriage, and that I am in no way interested
in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 18 day of December, 1974.


DANIEL FOX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X 74 Civ. 3116 (CLB)

ROBERT J. FINE,

Plaintiff,

-against-

NOTICE OF MOTION AND
MOTION PURSUANT TO
F.R.C.P. 60(b)

THE CITY OF NEW YORK, PTL. ANTHONY
SALADINO, ESTATE OF ROBERT L. RADTKE,
DET. MICHAEL SASSAMAN, PTL. "JOHN"
STANLEY, PTL. "JOHN" DWYER, PTL. "JOHN"
FISCHER, SGT. "JOHN" MURRAY, FRANK
KLEIN, MARVYN KORNBERG, ESQ., ALBERT
GAUDELLI, ESQ. and HERBERT KAHN, ESQ.,

Defendants.

-----X

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of
DAN BRECHER, sworn to the 25th day of March, 1975, the decisions
of Hon. Charles L. Brieant, Jr. dated November 22, 1974 and Febru-
ary 7, 1975, the complaint and all of the proceedings heretofore
had, the undersigned will move this Court before the Hon. Judge
Charles L. Brieant, Jr., at a Term for motions to be held in Room
1106 of the United States District Courthouse at Foley Square,
New York City, New York on the 8th day of April, 1975 at 9:30
o'clock in the forenoon of that day or as soon thereafter as coun-
sel can be heard for an order pursuant to Rule 60(b) of the Federal
Rules of Civil Procedure granting relief from the final judgment
dismissing the complaint as against the defendants KORNBERG,

GAUDELLI, KAHN, KLEIN and THE CITY OF NEW YORK, and for such other and further relief as to this Court may be deemed just and proper.

Dated: New York, New York
March 5, 1975

Yours, etc.

DAN BRÉCHER, ESQ.
Attorney for Plaintiff
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New York, New York 10017
(212) 986-2820

TO: HAROLD C. HARRISON, ESQ.
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Long Island City, New York 11104

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

74 Civ. 3116 (CLB)

ROBERT J. FINE,

Plaintiff,

-against-

AFFIDAVIT IN SUPPORT
OF MOTION PURSUANT
TO F.R.C.P. 60(b)

THE CITY OF NEW YORK, PTL. ANTHONY
SALADINO, ESTATE OF ROBERT L. RADTKE,
DET. MICHAEL SASSAMAN, PTL. "JOHN"
STANLEY, PTL. "JOHN" DWYER, PTL. "JOHN"
FISCHER, SGT. "JOHN" MURRAY, FRANK
KLEIN, MARVYN KORNBERG, ESQ., ALBERT
GAUDELLI, ESQ. and HERBERT KAHN, ESQ.,

Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DAN BRECHER, being duly sworn, deposes and says:

1. I am an attorney at law duly admitted to practice in this Court and represent the plaintiff in this action.

2. This is an action to recover damages incurred by the plaintiff after some of the defendants broke into and burglarized the plaintiff's apartment on three separate occasions. Plaintiff was subsequently the victim of several extortion attempts and still has not been able to regain possession of most of the property taken by the defendants. The defendant CITY OF NEW YORK does not deny that it still retains some of this property which plaintiff alleges was stolen from him.

3. The defendants who have admitted illegally breaking into plaintiff's apartment and removing plaintiff's property therefrom include some of the defendant police officers.

4. The defendant KORNBERG admits having accompanied several policemen and the defendant DAVID FAULKNER on one such break-in.

5. Defendants GAUDELLI, KAHN, KLEIN and KORNBERG moved to dismiss the complaint herein for failure to state a claim. On November 22, 1974, Your Honor issued a decision granting their motions. Moreover, Your Honor dismissed the complaint as against the CITY OF NEW YORK on the basis that "there is no claim stated against the defendant City of New York under the federal statute."

6. Four days after Your Honor's decision was rendered, plaintiff deposed two of the defendant police officers, PTL. SALADINO and DET. SASSAMAN. Upon obtaining signed copies of their depositions, I promptly filed the originals with the Court and moved to reargue the motions to dismiss based on this new evidence.

7. I submitted this motion to reargue on an informal basis by letter after first discussing it with your law secretary, Ms. Joan Dolan, over a period of several weeks. Apparently, because of the overburdened caseload and undermanned situation with which Your Honor is faced, Ms. Dolan was unable to communicate to you my plans and her conversations with me in this regard.

8. Apparently as a result of this failure of communication, Your Honor treated my letter as an untimely motion to reargue Your Honor's November 22, 1974 decision, and, on February 7, 1975 denied the motion.

9. Thereafter, I spoke to Ms. Dolan again, who suggested that I make this formal Rule 60(b) motion.

10. It is respectfully submitted that this motion is based on the newly discovered evidence which is contained in the depositions of the two police officers taken after Your Honor's decision was rendered.

11. It is further respectfully submitted that this motion is timely, in that it is permissible to make this motion for relief within a reasonable time, although not more than a year after the order was entered. See B. Wham, Fed. Dist. Ct. Rule 60(b): A Humane Rule Gone Wrong, 49 A.B.A. J. 566 (1963).

12. The deposition of the defendant SASSAMAN contains the following material admissions:

a. On March 5, 1972, four police officers and the defendant DAVID FAULKNER broke into and ransacked the plaintiff's apartment (Dep. of Sassaman; page 34 - line 15 and page 33 - line 13).

b. Again on March 6, 1972, PTL. SASSAMAN, DET. RADTKE and the defendants FAULKNER and KORNBERG broke into the

plaintiff's apartment (Dep. of Sassaman; page 19 - line 20).

c. The March 6, 1972 entry into the plaintiff's locked apartment was gained by the defendant FAULKNER's climbing a rear fire escape, breaking a window, climbing into the apartment through the window and letting the police and Mr. KORNBERG in through the front door after restraining the plaintiff's two dogs (Dep. of Sassaman; page 17 - line 13 through page 18 - line 17 and page 32 - lines 9-15).

d. On March 6, 1972, before breaking into the apartment, the two police officers, FAULKNER and KORNBERG went to the superintendent of the building to gain entry to the plaintiff's apartment (Dep. of Sassaman; page 12 - line 24).

e. The police had no search warrant and no arrest warrant to justify breaking into the plaintiff's apartment on March 6, 1972 (Dep. of Sassaman; page 20 - lines 4-16).

f. After searching plaintiff's apartment for five minutes and determining that the plaintiff was not there, the two police officers and FAULKNER and KORNBERG remained in plaintiff's apartment for one or two hours (Dep. of Sassaman; page 22 - lines 8-14).

g. On March 6, 1972, the police removed from plaintiff's apartment everything that was visible and appeared to have value (Dep. of Sassaman; page 28 - line 11). They also removed

everything that was of value which they found after searching the plaintiff's dresser drawers and every closet in the apartment (Dep. of Sassaman; page 28 - line 17 through page 29 - line 11).

h. On March 7, 1972, SASSAMAN again entered plaintiff's apartment without a warrant (Dep. of Sassaman; page 6 - line 8 and page 37 - line 19).

i. Det. RADTKE told Ptl. SASSAMAN to keep a box of American coins taken from plaintiff's apartment on March 6, 1972 and not voucher them to the Police Department Property Clerk (Dep. of Sassaman; page 39 - line 25; also generally discussed at page 37 - line 25 through page 40 - line 2).

j. Det. RADTKE admitted to Ptl. SASSAMAN that he was involved in an attempt to obtain a bribe from the plaintiff (Dep. of Sassaman; page 44 - lines 17-22 and page 47 - line 19 through page 48 - line 18).

k. The Queens County District Attorney's Office advised Ptl. SASSAMAN that he could be arrested for burglary and bribery with regard to the March 5, 6 and 7, 1972 entries into the plaintiff's apartment (Dep. of Sassaman; page 46 - line 14).

l. Assistant Attorney Carl Soller of the staff of Special State Prosecutor Maurice Nadjari was investigating Det. RADTKE's breaking into Mr. Fine's apartment, theft of Mr. Fine's

property and coercion of bribes from Mr. Fine (Dep. of Sassaman; page 46 - line 20).

m. Apparently fearful of the results of the Special State Prosecutor's investigation of this matter, Det. RADTKE committed suicide (Dep. of Sassaman; page 49 - line 19).

n. In March, 1973, SASSAMAN testified before a Special Prosecutor's Grand Jury regarding the breaking and entering of Mr. Fine's home (Dep. of Sassaman; page 50 - line 25 through page 51 - line 9). Upon information and belief, the defendant KORNBERG also testified before that Grand Jury, but only after first requesting and receiving immunity from prosecution.

o. The defendant KORNBERG broke into plaintiff's apartment on March 6, 1972 with defendants RADTKE, SASSAMAN and FAULKNER (Dep. of Sassaman; page 19 - line 20 and page 51 - line 21 through page 52 - line 8).

13. It is respectfully submitted that the above information constitutes material facts which, through no fault of plaintiff were not submitted to the Court for its consideration at the time Your Honor rendered his decision dismissing the complaint against some of the defendants.

14. It is further respectfully submitted that the defendant KORNBERG's motion papers were misleading in that they failed to mention the very material facts regarding the defendant KORNBERG

alleged appearance before Special Prosecutor Nadjari's Grand Jury, KORNBERG's alleged request for immunity from prosecution regarding the breaking and entering of Mr. Fine's apartment and his alleged participation in a conspiracy to obtain a \$10,000.00 bribe from Mr. Fine. Thus, Mr. KORNBERG's misrepresentation of the facts constitutes an additional basis for this Rule 60(b) motion. See Lacklin v. Switzer Bros., (7th Cir. 1964) 335 F.2d 331.

15. It is further respectfully submitted that Ptl. SASSAMAN's testimony shows that Mr. KORNBERG was with the police when they entered Mr. Fine's building on March 6, 1972. I am informed that Mr. KORNBERG went with the police to the superintendent of the building when they tried to gain access to Mr. Fine's apartment. I am further informed that when the police officers asked the superintendent to permit them to enter Mr. Fine's apartment, Mr. KORNBERG was with them and did not, at that time, identify himself as an attorney. Thus, the superintendent has stated that he was under the impression that Mr. KORNBERG was a policeman because Det. RADTKE stated "We are the police."

16. It is, therefore, respectfully submitted that Mr. KORNBERG did in fact act under color of state law in illegally entering the plaintiff's apartment on March 6, 1972. It has been held that private persons holding no public position can properly

be held to be acting under pretense or color of law when they deceive citizens into believing that they are officers of the State. (United States v. Trunko [1960, D.C.Ark.] 189 F.Supp. 559. Cf. Williams v. United States [1951] 341 U.S. 97, 95 L.Ed. 774, 71 S.Ct. 576, and Thomas v. Miller [1968, D.C.Tenn.] 282 F.Supp. 571.)

17. Mr. KORNBERG has alleged in his moving papers that he did nothing wrong. If that is so, then why did he request and accept immunity before testifying before the Nadjari Grand Jury in this regard, as alleged above. If Mr. KORNBERG requested and accepted immunity in this regard, it is respectfully submitted that he misled the Court in not so informing Your Honor in his moving papers.

18. It is respectfully submitted that the complaint, when viewed in the light of Ptl. SASSAMAN's testimony, sufficiently pleads causes of action against the defendants under the Federal Civil Rights Act §1981-1988.

19. With respect to Your Honor's dismissal as against the defendant the CITY OF NEW YORK, it is respectfully submitted that the plaintiff may thereby be precluded from recovering his property which is being wrongfully retained by the CITY OF NEW YORK despite the fact that no charges are pending against him. The CITY OF NEW YORK withheld plaintiff's taxicab until Det. RADTKE, allegedly

acting in concert with the defendant FRANK KLEIN, coerced a \$500.00 payment from the plaintiff and arranged for the release of the cab. The City is still withholding the plaintiff's hack license despite the fact that plaintiff has never been convicted of a crime and there are no charges pending against him. Moreover, when the police broke into plaintiff's apartment on March 6, 1972, they had the A.S.C.P.A. come and take the plaintiff's two dogs away without informing the plaintiff. The dogs were subsequently killed without the plaintiff's knowledge or consent.

20. What justifiable explanation is there for the behavior of the police? The plaintiff is not a known criminal (Dep. of Sassaman; page 42 - line 17). The plaintiff had never been arrested prior to March 7, 1972 (Dep. of Sassaman; page 42 - line 19).

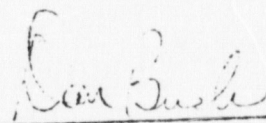
The truth appears to be that the police wanted to loot Mr. Fine's apartment and that they apparently did so. It further appears that Det. RADTKE wanted to "shake down" Mr. Fine and that he attempted to do so. It also appears that FRANK KLEIN, the plaintiff's attorney in the resulting criminal charges, participated in Det. RADTKE's "shake down" of the plaintiff. I am informed that Mr. KLEIN was subsequently indicted and convicted for similar offenses in which he apparently conspired with a member or members

of the Queens County District Attorney's Office according to newspaper accounts. I believe KLEIN's conviction was subsequently overturned on certain technical grounds.

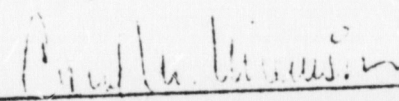
21. And what of Mr. KORNBERG in all of this? He allegedly actively participated in the illegal and unethical soliciting of a \$10,000.00 payment from plaintiff relating to the dropping of the criminal charges against plaintiff. Mr. KORNBERG has alleged his complete innocence of wrong-doing, but has apparently failed to advise the Court of all the material facts in this regard, thereby misleading the Court.

22. Thus, I believe that in dismissing this action against certain defendants and refusing to exercise ancillary jurisdiction over other defendants, Your Honor was unaware of the grim material facts which were subsequently admitted by the defendant police officer as set forth above. It is respectfully submitted that further discovery will serve to bring out further confirmation of the plaintiff's claims against all of the defendants.

23. Therefore, it is respectfully requested that Your Honor permit reargument of the defendants' motions to dismiss and that said motions be denied.


DAN BRECHER

Sworn to before me this
25th day of March, 1975.


CAROL M. MORRISON
Notary Public, State of New York
No. 41-2730350
Qualified in Queens County
Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT J. FINE,

Plaintiff,

-against-

THE CITY OF NEW YORK, PTL. ANTHONY
SALADINO, ESTATE OF ROBERT L. RADTKE,
DET. MICHAEL SASSAMAN, PTL. "JOHN"
STANLEY, PTL. "JOHN" DWYER, PTL. "JOHN"
FISCHER, SGT. "JOHN" MURRAY, FRANK
KLEIN, MARVYN KORNBERG, ESQ., ALBERT
GAUDELLI, ESQ., and HERBERT KAHN, ESQ.,

Defendants.

74 Civ. 3116 (CLB)

SUPPLEMENTAL
AFFIDAVIT IN SUPPORT
OF MOTION PURSUANT
TO F.R.C.P. 60(b)

STATE OF NEW YORK) ss.:
COUNTY OF NEW YORK)

DAN BRECHER, being duly sworn, deposes and says:

1. I am an attorney at law duly admitted to practice in this Court and represent the plaintiff in this action.
2. This is an action to recover damages incurred by the plaintiff after some of the defendants broke into and burglarized the plaintiff's apartment on three separate occasions. Plaintiff was subsequently the victim of several extortion attempts and still has not been able to regain possession of most of the

property taken by the defendants. The defendant CITY OF NEW YORK does not deny that it still retains some of this property which plaintiff alleges was stolen from him, and in an obvious ploy, has offered to return some property to the plaintiff which it has attempted to attribute to the plaintiff.

3. In Point Two of his Memorandum of Law in Opposition to this motion, counsel for defendant Kornberg has accused me of misconduct "in disclosing what allegedly took place before a Grand Jury, 'without a written order of the Court'"...

4. This is another example of this defendant's attempt to mislead Your Honor. The defendant cites Section 190.25 of the Criminal Procedure Law of New York and then only quotes a part of that section. Annexed hereto is a copy of this statute. No where in this statute is there any prohibition of my informing the Court that Mr. Kornberg asked for and received immunity before giving testimony.

5. It has come to my attention that the Police Department of the City of New York has, after delaying for several years, finally begun disciplinary proceedings against the police officers who broke into plaintiff's house on March 5, 1972.

6. I am further informed that the Queens District Attorney's Office, and especially the defendant Gaudelli,

impeded the investigation of plaintiff's charges by the Police Department.

7. I am further informed that on several occasions the defendant Gaudelli had arguments with Mr. Norris of the New York City Police Department, Internal Affairs Division, because Mr. Gaudelli was hampering the prosecution of the police officers and others who had broken into the plaintiff's apartment.

8. The police and Kornberg admit having broken into plaintiff's apartment, The police admit having stolen plaintiff's property while ostensibly performing their duties as employees of the City of New York's Police Department.

9. The defendants Assistant District Attorneys Gaudelli and Kahn do not deny any of the allegations of the complaint, including the criminal acts alleged therein.

10. The defendants Klein and Kornberg do not deny the facts alleging an extortion of money from the plaintiff.

11. The City of New York does not deny that its employees burglarized plaintiff's home and removed \$3,800.00 in cash and coin collection and other valuable property of the defendant. Yet it offers only to return certain worthless property.

12. The plaintiff contends that one of the pictures which the City offers to return will prove that the Queens District Attorneys Office suborned perjury.

13. All of the issues arise solely out of the defendants' break-ins into plaintiff's apartment on March 5th, 6th and 7th of 1972. They are all directly related to the plaintiff's claim brought under the Federal statute. It is respectfully submitted that the plaintiff has stated a claim against all of the defendants under the Federal statute.

14. Moreover, each and every one of those claims set forth in the complaint herein which state a civil tort claim arises out of the exact and specific facts which state the federal claim. Thus, it is further respectfully submitted that as to those claims, the Court should exercise ancillary jurisdiction.

15. If the plaintiff's contentions are true plaintiff has clearly been the victim of a gross and heinous violation of his civil rights by the acts of some defendants, which other defendants subsequently covered up, perpetuated and used as the basis for an extortion of money from the plaintiff.

16. Therefore, it is respectfully submitted that Your Honor should permit reargument of the defendants' motions to dismiss and that said motions should be denied.

Sworn to before me this
21st day of April, 1975.

Notary Public in and for the County of New York
Commission Expires April 12, 1977


DAN BRECHER

Note 11

11. Records

In order to prevent unjustified re-submission of matters to grand jury under this section [Code Crim.Proc. § 270], a record should be made of grand jury proceedings wherein no indictment was voted, notwithstanding fact that no depositions or statements, which are required by [Code Crim.Proc.] section 269 to be re-

turned to court in event of failure to indict, were transmitted to grand jury. Application of Knight, 1911, 176 Misc. 625, 28 N.Y.S.2d 353.

Primary purpose of preserving record of grand jury's proceedings is to aid courts and district attorney. In re Attorney General of U. S., 1937, 160 Misc. 523, 291 N.Y.S. 5.

§ 190.25 Grand jury: proceedings and operation in general

1. Proceedings of a grand jury are not valid unless at least sixteen of its members are present. The finding of an indictment, a direction to file a prosecutor's information, a decision to submit a grand jury report and every other affirmative official action or decision requires the concurrence of at least twelve members thereof.

2. The foreman or any other grand juror may administer an oath to any witness appearing before the grand jury.

3. During the deliberations and voting of a grand jury, only the grand jurors may be present in the grand jury room. During its other proceedings, the following persons, in addition to witnesses, may, as the occasion requires, also be present:

(a) The district attorney;

(b) A clerk or other public servant authorized to assist the grand jury in the administrative conduct of its proceedings;

(c) A stenographer authorized to record the proceedings of the grand jury;

(d) An interpreter. Upon request of the grand jury, the prosecutor must provide an interpreter to interpret the testimony of any witness who does not speak the English language well enough to be readily understood. Such interpreter must, if he has not previously taken the constitutional oath of office, first take an oath before the grand jury that he will faithfully interpret the testimony of the witness and that he will keep secret all matters before such grand jury within his knowledge;

(e) A public servant holding a witness in custody. When a person held in official custody is a witness before a grand jury, a public servant assigned to guard him during his grand jury appearance may accompany him in the grand jury room. Such public servant must, if he has not previous-

ly taken the constitutional oath of office, first before the grand jury that he will keep secret before it within his knowledge.

4. Grand jury proceedings are secret, and no other person specified in subdivision three may, on lawful discharge of his duties or upon written order, disclose the nature or substance of any grand jury or any decision, result or other matter attending a proceeding.

5. The grand jury is the exclusive judge of the respect to any matter before it.

6. The legal advisors of the grand jury are the district attorney, and the grand jury may not seek legal advice from any other source. Where necessary, the court or the district attorney, or both, may instruct the grand jury concerning the law with respect to its duties or any matter before it, and such instructions shall be recorded in the minutes.

L.1970, c. 996, § 1, eff. Sept. 1, 1971.

Source of Section

Subd. 1. Code Crim.Proc. 1881, §§ 224, 268. Section 224, for history, see note under section 190.05. Section 268 amended L.1927, c. 249, § 4, derived from R.S., pt. 4, c. 2, tit. 4, § 26.

Subd. 2. Code Crim.Proc. 1881, § 246, formerly 253, amended L.1927, c. 249, § 3; renumbered 246, L.1954, c. 305, § 6; renumbered 253, L.1955, c. 861, § 4; renumbered 246, L.1956, c. 402, § 7, derived from R.S., pt. 4, c. 2, tit. 4, § 29.

Subd. 3. Code Crim.Proc. 1881, §§ 255, 256, 257. Section 255, formerly 262, amended L.1928, c. 760; L.1940, c. 41, § 3; renumbered 255, L.1954, c. 305, § 6; renumbered 262, L.1955, c. 861, § 4; renumbered 255, L.1956, c. 402, § 7; amended L.1960, c. 551, § 1; L.1967, c. 681, § 47, derived in part from former section 256, formerly 263, amended L.1928, c. 759; L.1940, c. 41, § 4; renumbered 256, L.1954, c. 305, § 6; renumbered 263, L.1955, c. 861, § 4; renumbered 256, L.1956, c. 402, § 7; repeated L.1960, c. 551, § 2; originally revised from

R.S., pt. 4, c. 2, tit. 4, part from former section 264, amended L.1907, c. 645, § 2; L.1928, c. 761; L.1929, c. 41, § 5; renumbered 305, § 6; renumbered 861, § 4; renumbered 402, § 7; repeated L.1956, c. 402, § 7; originally revised from R.S., pt. 4, c. 2, tit. 4, § 23. Section 256, L.1960, c. 551, § 2. Subd. 4. Code Crim.Proc. 1881, §§ 256, 257, 258. Section 256, for history, see Subd. 3. Section 258, formerly 258, L.1954, c. 305, § 6; renumbered 258, L.1955, c. 861, § 4; renumbered 258, L.1956, c. 402, § 7; repeated L.1960, c. 551, § 2.

Subd. 5. See, R.S., pt. 4, c. 2, tit. 4, § 250, formerly 1940, c. 643; renumbered 305, § 6; renumbered 861, § 4; renumbered 402, § 7; L.1967, c. 681, § 47.

Subd. 6. Code Crim.Proc. 1881, § 255, for history, see above.

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grand jury

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L.1905, c. 280;
L.1915, c. 122; L.
c. 243; L.1949,
ed 257, L.1951, c.
ed 261, L.1955, c.
ed 257, L.1956, c.
L.1960, c. 551, § 2;
om R.S., pt. 4, c.
ops 256, 257 add-
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§ 6; renumbered
§ 4; renumbered
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c. 681, § 46.
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ce Subd. 3 note

Endorsement

ROBERT J. FINE, Plaintiff v. THE CITY OF NEW YORK, et al., Defendants.

74 Civ. 3116 CLB

Reargument is granted, and upon reargument, the prior decision is adhered to in all respects, except that plaintiff is granted leave, if so advised, to file an amended complaint within twenty (20) days from date hereof against defendant Kornberg. At the hearing held this date, factual allegations were made against Kornberg which were not before the Court when the original motion was submitted.

Brault v. Town of Milton, ____ F.2d ____ (2d Cir. Decided February 24, 1975), a decision rendered subsequent to our order of November 22, 1974, is not considered in point. The town as a municipal corporation acted directly in the Brault case. The instant case is no more than an attempt to visit liability upon the defendant municipality for the alleged activities of police officers on a rampage, acting tortiously and beyond their actual authority. Plaintiff may have full relief against the tortfeasors but there is no basis found in the Brault decision which will visit liability on the municipality.

So Ordered.

Dated: New York, New York
May 27, 1975

CHARLES L. BRIEANT, JR.

CHARLES L. BRIEANT, JR.
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X 74 Civ. 3116 (CLB)

ROBERT J. FINE,

Plaintiff,

-against-

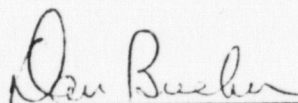
SECOND AMENDED
NOTICE OF APPEAL

THE CITY OF NEW YORK, PTL. ANTHONY
SALADINO, ESTATE OF ROBERT L. RADTKE,
DET. MICHAEL SASSAMAN, PTL. "JOHN"
STANLEY, PTL. "JOHN" DWYER, PTL. "JOHN"
FISCHER, SGT. "JOHN" MURRAY, FRANK
KELIN, MARVYN KORNBERG, ESQ.; ALBERT
GAUDELLI, ESQ. and HERBERT KAHN, ESQ.,
DAVID FAULKNER and MRS. DOLORES FAULKNER,
Defendants.

-----X

NOTICE IS HEREBY GIVEN that ROBERT J. FINE, the plaintiff
above-named, having heretofore on December 24, 1974 filed a Notice
of Appeal (copy annexed) to the United States Court of Appeals for
the Second Circuit from the final judgment entered in this action
on the 6th day of December, 1974, and an amended notice of appeal
on March 5, 1975 (copy annexed), hereby appeals to the United States
Court of Appeals for the Second Circuit from the decision (copy
annexed) entered in this action on the 27th day of May, 1975.

Dated: New York, New York
June 17, 1975


DAN BRECHER, ESQ.
Attorney for Plaintiff

TO: HAROLD C. HARRISON, ESQ.
Attorney for Defendant KORNBERG
118-21 Queens Blvd.
Forest Hills, New York 11375

TO: W. BERNARD RICHLAND, ESQ.
Corporation Counsel
Attorney for Defendant THE CITY OF NEW YORK
Municipal Building
New York, New York 10007

LOUIS J. LEFKOWITZ, Attorney General
Attorney for Defendants GAUDELLI and KAHN
2 World Trade Center
New York, New York 10047

FRANK KLEIN, Defendant Pro Se
42-15 43rd Avenue
Long Island City, New York 11104

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

VICKI FIELDS being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 230 Park Avenue, New York, New York. That on the 12th day of September, 1975 deponent served the within Appendix of Plaintiff-Appellant Robert J. Fine upon the below-listed attorneys for the defendants herein at the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York:

W. BERNARD RICHLAND, Corporation Counsel
Attorney for Defendants THE CITY OF NEW YORK, et al.
Municipal Building
New York, New York 10007

LOUIS J. LEFKOWITZ, Attorney General
Attorney for Defendants ALBERT GAUDELLI and HERBERT KAHN
2 World Trade Center
New York, New York 10047

HAROLD C. HARRISON, ESQ.
Attorney for Defendant MARVYN KORNBERG
118-21 Queens Blvd.
Forest Hills, New York 11375

Defendant FRANK KLEIN, Pro Se
42-15 43rd Avenue
Long Island City, New York 11104

Vicki Fields
VICKI FIELDS

Sworn to before me this

12th day of September, 1975.

Dan Brecher

DAN BRECHER
Notary Public, State of New York
No. 31-678940
Qualified in New York County
Commission Expires March 30, 1977

NOTICE OF ENTRY

Sir: - Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

DAN BRECHER

Attorney for

Office and Post Office Address

230 PARK AVENUE

NEW YORK, N. Y. 10017

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir: - Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.

Dated,

Yours, etc.,

DAN BRECHER

Attorney for

Office and Post Office Address

230 PARK AVENUE

NEW YORK, N. Y. 10017

To

Attorney(s) for

Index No. 75-7021

Year 19

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ROBERT J. FINE,
Plaintiff-Appellant,
vs.

THE CITY OF NEW YORK, et al.,
Defendant-Appellees,

and

PTL. ANTHONY SALADINO, et al.,
Defendants.

AFFIDAVIT OF SERVICE
OF PLAINTIFF-APPELLANT'S
APPENDIX

DAN BRECHER

Attorney for Plaintiff-Appellant

Office and Post Office Address, Telephone

230 PARK AVENUE

NEW YORK, N. Y. 10017

(212) 986-2820

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for